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International Convention for the Protection of All Persons from Enforced Disappearance

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Committee on Enforced Disappearances

Report submitted by Chile under article 29 (1) of the Convention, due in 2012*, **

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Acronyms and abbreviations

BOL	Boletín Legislativo
PRAIS	Compensation and Comprehensive Health-Care Programme
SENAME	National Service for Minors

I. Methodology

1. The aim of the International Convention for the Protection of All Persons from Enforced Disappearance (the Convention)[1] is to prevent enforced disappearances, combat impunity and guarantee victims' rights to justice and reparation. As a State party, Chile is required to submit to the Committee on Enforced Disappearances (the Committee) a report on the measures taken to give effect to its obligations under the Convention. Preparation of the present report involved coordinated work and a methodology that systematized information with a view to reporting on the progress made by Chile and the challenges that remain. The recommendations made by the Working Group on Enforced or Involuntary Disappearances following its official visit to Chile from 13 to 21 August 2012 were also taken into account.[2]

2. The information on which this report is based was obtained through the cooperation of public bodies consulted pursuant to the guidelines setting out the Committee's requirements in relation to articles of the Convention. One of the key conditions for the preparation of the report was the inclusion of historical information on the 11 September 1973 military coup and the mass, systematic and institutionalized human rights violations experienced by the Chilean people. The Government decided to include information about the military dictatorship, even though it predated the adoption of the Convention and is not therefore covered by it, in order to place in context cases of enforced disappearance that occurred between 11 September 1973 and 10 March 1990 and cases that occurred subsequently,[3] in a different historical and legal context. Looking at past violations and the various institutional responses to them is key to understanding how Chile's policies on truth, justice, reparation and guarantees of non-repetition are evolving at the present time.

3. Public institutions performing functions related to the prevention, investigation, punishment and reparation of enforced disappearances that occurred under the dictatorship were therefore consulted essentially about protocols or procedures governing states of emergency, statistics on public officials currently under investigation for such offences and the existence of training programmes to ensure that enforced disappearances do not happen again.

4. With regard to the work being done by the judiciary in cases of enforced disappearance, consolidated information was requested on the number, age and gender of recognized victims, the existence of judicial proceedings on their behalf and the State's involvement in investigations. This information was gathered using the database historically compiled and maintained by the Human Rights Programme Unit. For the past 10 years, the judiciary has been dealing with applications, allocating the necessary resources to judicial responses for establishing the truth about disappearances and imposing the corresponding penalties on perpetrators.

5. Another source of information that has helped shed light on cases of enforced disappearance is the work done by the Forensic Medical Service and the Civil Registry and Identity Service, both of which operate under the Ministry of Justice and Human Rights. The Forensic Medical Service has played an important role in establishing the identity of disappeared persons and the possible causes of death, while the Civil Registry and Identity Service has made it possible to transfer to their legal heirs the property of persons who are absent by reason of enforced disappearance.

6. The information provided by public institutions that play a role in the investigation of enforced disappearances that occurred in the period beginning with the transition to

[1] Adopted by United Nations General Assembly resolution 61/177 of 20 December 2006 and ratified by Chile on 8 December 2009.

[2] And the reformulated recommendations made after the Government transmitted to the Working Group in May 2017 information on the progress made since the 2012 visit in implementing the recommendations.

[3] In the communications sent to public bodies, 31 December 2016 was established as the cut-off date for gathering the requested information. Information on the main advances made in 2017 is also included.

democracy, such as the Public Prosecution Service, the Public Criminal Defence Service, the National Human Rights Institute[4] and armed forces and law enforcement institutions, was especially important for this report.

7. To ensure that the report was prepared correctly, technical assistance was sought from the Working Group on Enforced or Involuntary Disappearances, which agreed that its expert Ariel Dulitzky should visit the country. The main purpose of this visit, which took place on 23 and 24 March 2017, was to advise on the preparation of the follow-up table describing the action taken to implement the recommendations made by the Working Group following its 2012 visit[5] and on the drafting of Chile's initial report to the Committee. During his visit, Mr. Dulitzky held a number of meetings,[6] including a meeting with civil society facilitated by the Government, which provided an opportunity for dialogue.

8. Lastly, on 20 November 2017,[7] staff from the Office of the Under-Secretary for Human Rights met with organizations of relatives of victims of the dictatorship and former political prisoners to inform them of the contents of the Government's report to the Committee and the stages of its consideration in which they would be able to participate. The Office of the United Nations High Commissioner for Human Rights (OHCHR) Regional Office for South America assisted with this meeting.

II. Introduction

9. Chile's international obligations with regard to the investigation and punishment of the offence of enforced disappearance must be analysed in the light of the mass, institutionalized and systematic human rights violations that occurred between 11 September 1973 and 10 March 1990 and the measures it has taken since the restoration of democracy. This introduction identifies initiatives undertaken since 1990, paying special attention to measures taken by the judiciary, reparation provided to relatives of disappeared prisoners and action taken to ensure that such offences will not be repeated. To give a better idea of the action taken by Chile, the report will describe the main developments in the areas of truth, justice and reparation.

10. As has been widely documented, enforced disappearance was one of the systematic and widespread practices whereby Chile was transformed into a criminal State under domestic and international law. Victims of human rights violations have described the political context and the repression of that period and the need to rebuild a democratic system that guarantees strict respect for human rights within a State governed by the rule of law.

11. The first governments elected after the return to democracy were aware that addressing the situation of human rights violations was essential for achieving governance and political stability. Their priorities were establishing the truth, providing reparation to victims and relatives[8] and ensuring justice for grave human rights violations as prerequisites for healing the wounds of the past.

[4] National human rights institution created by Act No. 20.405 of 10 December 2009.

[5] http://ddhh.minjusticia.gob.cl/media/2016/12/Cuadro-GTDFI-actualizado-21.08.17-Subse-DDHH.pdf.

[6] In particular, meetings with Lorena Fries, Under-Secretary for Human Rights; Sergio Muñoz, Supreme Court judge and the judiciary's chief human rights expert; the National Human Rights Institute; parliamentary advisers from the Human Rights Committees of the Chamber of Deputies and the Senate; and representatives of civil society and human rights investigation centres.

[7] http://ddhh.minjusticia.gob.cl/subsecretaria-de-derechos-humanos-presenta-a-la-sociedad-civil-el-primer-informe-del-estado-de-chile-para-el-comite-contra-las-desapariciones-forzadas/.

[8] In line with article 24 of the Convention, where this report refers to "victims and relatives", the definition of "victim" is understood to include not only the disappeared person but also any individual who has suffered harm as the direct result of an enforced disappearance, such as the person's relatives.

1. Truth

12. Once democracy had been restored, one of Chile's main concerns was to adopt policies that would address the need to establish the truth about the dictatorship's human rights violations. It was vitally important to find out what had happened, where the disappeared were, how they had disappeared and which agents of the State were responsible. Temporary truth commissions were set up to receive information about victims and their relatives, provide official recognition of their status and give access to various forms of reparation.

13. The first commission to help establish the truth was the National Truth and Reconciliation Commission (known as the "Rettig Commission"). The Commission was set up by Supreme Decree No. 355 of 25 April 1990 and concluded its work on 8 February 1991 with the submission of a final report.[9] During this period, it received 3,550 complaints, out of which it recognized 2,279 victims of human rights violations, comprising victims of enforced disappearance and victims of execution. Of these, 979 were disappeared prisoners.

14. On 8 February 1992, Act No. 19.123[10] established the National Reparation and Reconciliation Board to coordinate, implement and promote the recommendations made by the Rettig Commission and to review cases that the Rettig Commission had been unable to consider due to lack of information or cases that had not been submitted to it. The Board published a report[11] in which the status of an additional 899 victims was recognized, of whom 123 were disappeared prisoners.

15. In 2003, a third body, the National Commission on Political Prisoners and Torture ("Valech Commission" or "Valech I Commission"), was created by Supreme Decree No. 1040 with the sole mandate of identifying, from the information received, victims of politically motivated imprisonment and torture by State agents or persons working for them in the period between 11 September 1973 and 10 March 1990.[12] This was followed by the adoption of Act No. 19.992 establishing a reparation pension and other benefits for the persons indicated therein, which awarded an annual reparation pension and medical and educational benefits to persons recognized as victims by the Valech Commission. The number of these victims totalled 27,255, of whom 102 had been children or adolescents or had been born during their mothers' imprisonment. The Valech Commission also rejected 8,611 cases for a variety of reasons.[13]

16. Act No. 20.405 of 10 December 2009 created the Advisory Commission on the Classification of Disappeared Detainees, Victims of Political Executions and Victims of Political Imprisonment and Torture ("Valech II Commission"), whose responsibilities included receiving new testimonies and information about victims of enforced disappearance, political execution, political imprisonment or torture who had not been recognized by the earlier commissions. In its final report, submitted in 2011, the Commission recognized 30 new cases, six of which were cases of enforced disappearance. Act No. 20.405 also extended reparation benefits to relatives of recognized victims. In all,

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[9] President Patricio Aylwin created the Commission on 25 April 1990 with the mandate of helping establish fully for the first time the truth about the serious human rights violations committed between 11 September 1973 and 10 March 1990 under the military dictatorship. The Commission was chaired by Raúl Rettig, a legal expert and politician, and its nine other members were eminent Chilean social scientists and legal experts. After nine months of work, the Commission submitted its report on 8 February 1991, in which it concluded that 2,279 individuals had lost their lives in that period, 164 of whom it classified as victims of political violence and 2,115 as victims of human rights violations. It proposed a number of measures to compensate victims' relatives. The final report is available at http://www.gob.cl/informe-rettig/.

[10] The text of the Act is available at https://www.leychile.cl/Navegar?idNorma=30490.

[11] http://www.cedocmuseodelamemoria.cl/wp-content/uploads/2011/12/Informe_CNNR.pdf.

[12] The list of persons recognized as victims by the Valech I Commission is available at http://pdh.minjusticia.gob.cl/wp-content/uploads/2015/12/CNPPTetapa-reconsideraci%C3%B3n.pdf.

[13] These cases were rejected, inter alia, because they did not involve politically motivated torture or imprisonment, they were already covered by other truth commissions, they involved political imprisonment or torture but had occurred outside the country or they had not resulted in a conviction. See https://www.indh.cl/bb/wp-content/uploads/2017/01/nominas.pdf.

the three commissions recognized 1,107 victims of enforced disappearance. While commending their dedication and professionalism, however, it must be noted that six cases were classified incorrectly and one was duplicated, reducing the number of disappeared persons to 1,100.[14]

17. The Forum for Dialogue (Mesa de Diálogo), established in August 1999, also made an important contribution. Designed to advance the search for victims of enforced disappearance during the dictatorship, it brought together the most representative sectors of national life, including the country's highest authorities and civilian, military, religious and ethical institutions. As a result of the agreements reached by the Forum, in January 2001 the armed forces and law enforcement agencies handed over a list indicating what had happened to 200 victims (180 identified and 20 unidentified). This information, which the then President of the Republic made public, transmitting it to the Supreme Court with the request that judicial bodies be strengthened in order to advance efforts to establish the truth, had a profound impact on victims' relatives and society at large. The Court appointed investigating judges — special judges devoted exclusively to this task — and ordered the reopening of cases, thereby streamlining the functioning of the country's law courts and creating new opportunities for determining the fate of victims from the period 1973–1990.[15] It should be mentioned that inconsistencies were later identified in the information provided by the armed forces.

2. Justice

18. In keeping with international obligations, human rights violations must be investigated and punished and reparation must be made. Chile has taken steps to comply with these obligations, a task that was far from easy in the early years following the dictatorship, among other reasons because of continuing support for the former regime and legislative barriers inherited from it.

2.1 Establishment of the Human Rights Programme Unit to continue the application of Act No. 19.123[16]

19. With regard to the administration of justice, mention should be made of the work of the Human Rights Programme Unit and the progress achieved in judicial cases. The Unit was created by Supreme Decree No. 1005 of 9 June 1997 of the Ministry of the Interior and Public Security, article 1 of which mandated the Unit to provide legal and social assistance to relatives of victims recognized by the Rettig Commission and the National Reparation and Reconciliation Board,[17] with a view both to obtaining the benefits established by Act No. 19.123 and to enforcing the right recognized in its article 6.[18] With the entry into force of Act No. 20.885 creating the Office of the Under-Secretary for Human Rights, the Unit was transferred from the Ministry of the Interior to the Ministry of Justice and Human Rights, where it acquired its current title (previously the Human Rights Programme) and became institutionalized, with an organizational structure that placed it on a sounder

[14] In the incorrectly classified cases and the duplicated case, the victims were excluded from the register and their relatives were denied the possibility of receiving the benefits associated with their classification as victims. The Social Security Institute suspended the provision of benefits indefinitely in cases where there was information showing that recipients did not fulfil the Act's requirements for receiving them. In these cases, the Ministry of the Interior filed lawsuits against recipients for the crime of fraud against the Treasury. The cases were heard by Santiago Appeal Court judge Alejandro Solís. Only in the case of Lidia Esmerita Reyes Millar, beneficiary of Pedro Millar Márquez, was the pension reinstated after she was acquitted.

[15] Information available at http://pdh.minjusticia.gob.cl/mesa-de-dialogo/.

[16] The Human Rights Programme belonged legally and administratively to the Ministry of the Interior and Public Security. However, Act No. 20.885 ordered its transfer to the Office of the Under-Secretary for Human Rights. Its mandate was confirmed on 3 January 2017.

[17] Legal mandate expanded subsequently by Act No. 20.405 to cover victims recognized by the Valech II Commission.

[18] Article 6 states that locating disappeared prisoners and the bodies of executed persons and establishing the circumstances of their disappearance or death are an inalienable right of victims' relatives and Chilean society.

operational footing. In addition to providing legal and social assistance to relatives of victims of enforced disappearance and political execution, the Unit is responsible for fostering a culture of respect for human rights by promoting, publicizing and supporting cultural and educational projects of symbolic reparation (see under "Symbolic reparation"). In its 20 years of existence, the Unit has gradually expanded its areas of work to include, inter alia, social aspects, memory projects and psychosocial assistance to victims and relatives. It is responsible for:

- Determining the circumstances in which recognized victims disappeared and died, information that relatives of victims of enforced disappearance and Chilean society at large have a right to know;
- Safekeeping the information gathered by the Rettig Commission and the National Reparation and Reconciliation Board;
- Supporting symbolic initiatives to help create a culture of respect for human rights.

20. The Unit participates as a third-party intervener in judicial cases involving victims of enforced disappearance and political execution whose remains have not been returned.[19] Act No. 19.980 of 9 November 2004 amended Act No. 19.123 to expand the Unit's powers and establish new benefits for relatives of recognized victims. Act No. 20.405 likewise expanded the Unit's powers by authorizing it to take all necessary legal action, including filing complaints with regard to the offences of abduction or enforced disappearance and the offences of homicide or summary execution, as the case may be. Legal recognition of this power made it possible for the Unit to file complaints on behalf of recognized victims of enforced disappearance and political execution, to be a party to applications for habeas corpus and protection of conditional freedoms and to make applications to the Constitutional Court challenging the applicability of certain laws.

2.2 Law courts

21. In the years following the restoration of democracy, the judiciary had to contend with various obstacles in implementing Chile's transitional justice process. In addition to laws inherited from the dictatorship, such as the Amnesty Decree-Law,[20] there were social obstacles, such as the perception among some social sectors that reconciliation could be achieved as long as cases of human rights violations were not investigated. Over the past 27 years, the judiciary has incorporated human rights standards into its judgments on cases related to the dictatorship, which are now an essential foundation for its decisions.

22. Reference should be made to the work done by the high courts to apply international human rights law, especially the Rome Statute of the International Criminal Court, the International Convention for the Protection of All Persons from Enforced Disappearance and the Inter-American Convention on Forced Disappearance of Persons. Domestic case law has been influenced by international standards on such issues as the non-applicability of statutory limitations and amnesties to crimes against humanity, ensuring progress towards full enjoyment of the right to truth and justice.[21] This growing influence of

[19] Because of the time at which enforced disappearances and political executions occurred (1973–1990), the procedure for investigating them is governed by the old Code of Criminal Procedure, as well as by the provisions common to all proceedings under the new Code of Criminal Procedure. The new Code establishes that third-party interveners are parties who put forward claims or counterclaims matching those of some of the direct parties. They intervene in proceedings once these have begun and support the procedural action of either the plaintiff or the respondent, hence their name. Although they are not direct parties, they have an actual interest in the outcome of the proceedings because the trial involves an actual right and not just an expectation (article 23 (2) and (3) of the Code). They form a single unit with the direct party whom they are supporting, which means that they have a right to intervene at any stage of the proceedings. They also enjoy the rights accorded by article 16 of the Code; in other words, they can separately make such allegations and give such evidence as they deem appropriate.

[20] Decree-Law No. 2191 of 19 April 1978. Available at: https://www.leychile.cl/Navegar?idNorma=6849.

[21] It was not until 1998 that the Supreme Court, in hearing the case brought for the disappearance of Pedro Poblete Córdova, ordered the reopening of an investigation closed by the military courts on the grounds that his abduction was not covered by the Amnesty Decree-Law but by the Geneva

international law is reflected in the incorporation into judicial reasoning of norms of jus cogens, international jurisprudence and the case law of the Inter-American Court of Human Rights,[22] thereby permitting the consolidation of international criminal law in Chilean jurisprudence.

23. As of 31 December 2016, the Unit was participating in 943 trials involving 1,741 recognized victims, of whom 999 were victims of enforced disappearance. Moreover, 150 convictions in cases of enforced disappearance brought between 1995 and 2016 on behalf of 307 victims have been enforced. In 2001, for the first time, the Supreme Court appointed nine judges to work exclusively on the investigation of 114 enforced disappearances committed under the dictatorship. More recently, the Supreme Court appointed 32 appeal court judges throughout Chile who are currently conducting 1,269 trials for enforced disappearance, execution and torture. For further details, see the information given in relation to articles 3 and 12 of the Convention.

3. Reparation

24. The Chilean Government has implemented a comprehensive reparation policy involving various forms of material and non-material compensation designed to compensate victims' relatives for the consequences of the dictatorship's human rights violations. It has performed this task by taking a variety of reparation measures.

25. The Human Rights Programme Unit provides social support to victims' relatives in all matters related to access to the rights established by reparation laws and the granting of social assistance in the context of judicial actions associated with the identification of victims' remains. It covers the costs of victims' funerals once their remains have been handed over or returned, following their identification by nuclear DNA testing, and the costs associated with any investigations ordered in the course of judicial proceedings.

26. Act No. 19.123, as amended by Act No. 19.980, established benefits for relatives of victims recognized by the Rettig Commission and the National Reparation and Reconciliation Board. These were later extended to cases recognized by the Valech II Commission. The following benefits were established:

- Reparation pension for the victim's spouse, the victim's mother or the victim's father if the mother forgoes it or has died, the mother or father of the victim's children born out of wedlock, the victim's children aged under 25 and any of his or her children of any age who have at least a 50-per-cent physical or mental disability;[23]
- Reparation voucher for victims' children aged over 25 who, at the time of the Act's promulgation, had not been awarded a pension;
- Two hundred compensation payments for, inter alia, relatives not covered by the Act and situations giving rise to a pension where there are no beneficiaries or cohabiting partners; education benefits consisting of the payment of enrolment and tuition costs for the victim's children, who may apply for them up to the age of 35;

Conventions of 1949, given that it had taken place in the context of a non-international armed conflict. In 2000, the Supreme Court confirmed the approach taken in the Poblete Córdova case by invoking for the first time, in the case of the abduction of Miguel Sandoval Rodríguez, the international definition of enforced disappearance and by imposing the first penalties on Manuel Contreras Sepúlveda, former member of the dictatorship and director of the National Intelligence Directorate (DINA), following the case brought for the assassination of Orlando Letelier and Ronnie Moffitt.

[22] The Inter-American Court of Human Rights argued in the case of *Almonacid Arrellano v. Chile* that States cannot invoke amnesty laws to circumvent their obligations to investigate, prosecute and punish international crimes.

[23] Decree No. 44 of 18 June 1993 regulated the application of article 20 of Act No. 19.123 on the declaration and review of disability of children of victims of human rights violations or political violence.

- Medical benefits consisting of the right to receive free of charge the medical services of preventive medicine, medical treatment, dental care and pregnancy care set out in Act No. 18.469;
- Education benefits consisting of the payment of enrolment and monthly tuition costs for students attending government-funded universities and vocational training institutes, and a monthly subsidy equivalent to 1.24 monthly tax units for pupils enrolled in secondary education and also for students of government-funded and non-government-funded universities and vocational training institutes;
- Exemption from compulsory military service for children born in or out of wedlock to or adopted by persons declared victims of human rights violations or political violence;
- Lastly, the Compensation and Comprehensive Health-Care Programme (PRAIS) established by Act No. 19.980 amending Act No. 19.123, which is administered by the Ministry of Health.

27. Act No. 19.992 established the following reparation measures for victims recognized by the Valech I Commission:

- In the health area, in addition to being enrolled in PRAIS, victims are entitled to receive from the State such technical aids and physical rehabilitation as are needed to overcome physical injuries sustained as a result of political imprisonment or torture, where such injuries are permanent and restrict the victim's capacity for education, work or social inclusion;
- In the education area, the State guarantees that persons whose education was interrupted because of political imprisonment or torture can continue their basic, secondary or higher education free of charge. Beneficiaries pursuing higher education in public or State-recognized private institutions are also entitled to payment of their enrolment and monthly tuition costs;
- In the financial area, an annual reparation pension is established for individuals identified in the Valech I Commission's report: 1,353,798 Chilean pesos for persons aged under 70; 1,480,284 pesos for persons aged over 70 but under 75; and 1,549,422 pesos for persons aged over 75.

28. Act No. 20.377 on the declaration of absence by reason of enforced disappearance was enacted in response to cases where inability to determine the legal status of a victim of enforced disappearance prevented the victim's relatives from exercising their rights to his or her property. The Act provides that the following shall constitute cases of enforced disappearance: arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which occurred in the period from 11 September 1973 to 10 March 1990.

29. PRAIS constitutes a further effort by the Government to provide health care to victims of repression and their relatives. Persons covered by PRAIS are entitled to receive free medical care in all establishments of the health services network (doctor's offices and public hospitals).

30. PRAIS is part of a public policy of lifetime reparation. There are 29 PRAIS teams, based in the country's 29 health services. These teams are multidisciplinary and consist mainly of general medical practitioners, psychologists, psychiatrists and social workers, who are responsible for assessing injury and designing a comprehensive health intervention plan. PRAIS is open to:

- Relatives of victims of enforced disappearance and political execution;
- Persons identified in the Valech I Commission's report;
- Persons certified as beneficiaries up to 30 August 2003;
- Persons who worked in human rights protection for a continuous 10-year period;

- Persons acquitted of political offences;
- Persons who have returned from political exile;
- Other persons whose situation the PRAIS team deems to be a priority according to technical norms, subject to consultation with the Ministry of Health.

3.1 Symbolic reparation

31. Until 2002, symbolic reparation gestures by the State[24] were isolated occurrences. In response to the demands of relatives' groups and the recommendations of the Rettig Commission report that there should be projects aimed at reclaiming the memory of victims both individually and collectively, the Human Rights Programme Unit devotes part of its budget to building memorials and maintaining historical memory sites and also to other forms of symbolic reparation, the aim being to lay the foundations for social coexistence and a culture that is more respectful of human rights in order to ensure that the human rights violations of the past are never repeated.[25]

32. One gesture in this area has been the work done by the Office of the Under-Secretary for Human Rights, through the Human Rights Programme Unit, in carrying out symbolic reparation projects. These may involve the construction of sites recalling the human rights violation in question or cultural projects such as exhibitions or documentaries. Such works reflect a commitment that transcends them and embodies the State's pledge fully to respect human rights. The Unit has been assisted in this task by other State bodies with expertise in the areas of construction, archives and historical sites. To date, 132 symbolic reparation projects have been approved and 1,577,812,041 Chilean pesos allocated to them (see annex I). Until 2016, there was simply a system for the direct allocation of funds to civil society organizations, with no objective technical criteria applied to the designation of projects. As of 2017, through the enactment of two technical norms, there is now a system for allocating funds on a competitive basis,[26] the aim being to eliminate any element of discretion in the allocation of public resources and to support the professionalization of groups competing for such resources.[27]

4. Memory

33. To complete this introductory section, attention is drawn to the fact that, since the restoration of democracy, Chile has gradually taken a number of institutional measures designed not only to prevent serious, mass violations of human rights but also to ensure coordination among State institutions so that, by learning from the lessons of the past, such crimes can be investigated and punished according to international standards.

34. The inter-institutional forum on memory, coordinated by the Human Rights Programme Unit, was set up in 2014. One of its first tasks was to analyse the situation of memory in Chile. That same year, the technical forum on memory sites, also coordinated by the Unit and involving various State institutions working on the issue, was formalized. Since presenting its first report, the inter-institutional forum has continued to function and is now working towards permanent coordination among State bodies to ensure that they cooperate in implementing the plans being executed in this area.

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[24] Building of the memorial to victims of enforced disappearance and political execution in Santiago's general cemetery (1994), monument to Salvador Allende (2000), Villa Grimaldi peace park (1997), Hornos de Lonquén national historical monument (1996), among others.

[25] Rettig Commission (1991). Report of the National Truth and Reconciliation Commission, p. 1058.

[26] http://ddhh.minjusticia.gob.cl/media/2017/08/RES-EX-212-3.pdf.

[27] The technical norms in question are: Exempt resolution No. 218 of 22 August 2017 establishing in the Unit's projects and memorials area a system of selection for competitive funding of projects to promote memory and a human rights culture; and Exempt resolution No. 2012 of 11 August 2017 adopting basic rules for the competitive fund for building projects, interventions and management plans related to memorials and commemorative sites.

35. As part of memory policy, the Museum of Memory and Human Rights[28] was inaugurated in 2010 with the following aims: to give greater visibility to the human rights violations committed by the Chilean Government between 1973 and 1990; to restore dignity to victims and their families; and to stimulate reflection and discussion about the importance of respect and tolerance so that such violations never happen again.

36. Decree No. 121[29] of 10 October 2006 instituted 30 August as the National Day of Disappeared Prisoners and reaffirmed the need to take memory- and justice-related measures to prevent the repetition of acts constituting enforced disappearance, in the belief that such measures contribute to reparation and to the building of a shared historical memory.

III. Information in relation to each substantive article of the Convention

Article 1
Legal and administrative measures establishing that no one shall be subjected to enforced disappearance

37. Chile has enshrined the principle of strict respect for human rights in its Constitution. Article 5 (2) of the Constitution establishes that the exercise of sovereignty is subject to respect for the essential rights of the human person. State organs have a duty to respect and promote those rights, which are guaranteed by the Constitution and by the applicable international treaties ratified by Chile. Chile has ratified the Inter-American Convention on Human Rights[30] and the Inter-American Convention on Forced Disappearance of Persons[31] and participated in the adoption of the Declaration on the Protection of All Persons from Enforced Disappearance.[32]

38. In the Chilean legal system, there is no express constitutional prohibition of enforced disappearance, although the Constitution does reiterate a concern about deprivation of liberty in its substantive provisions and lays down specific rules that anyone in a legal position to restrict the right to liberty must follow. Freedom is the general rule for all persons, including those under criminal investigation. Article 19 (7) of the Constitution is crucial in that it enshrines the right to liberty and security of person and does not allow its restriction in exceptional circumstances, save when a competent authority has issued an arrest warrant or the accused is caught in flagrante delicto.

39. Act No. 20.357 brought domestic legislation into line with the Rome Statute by defining enforced disappearance of persons as a crime against humanity.[33] Its application is therefore linked to the existence of a practice that is widespread or systematic, the elements that characterize this kind of international crime. On 17 December 2014, a bill[34] seeking to make enforced disappearance an ordinary offence was introduced by means of a parliamentary motion.[35]

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[28] http://www.museodelamemoria.cl/.

[29] https://www.leychile.cl/Navegar?idNorma=253912.

[30] Decree No. 280 of the Ministry of Foreign Affairs, published on16 April 2011.

[31] Decree No. 12 of the Ministry of Foreign Affairs, published on 24 February 2010.

[32] Adopted by United Nations General Assembly resolution 47/133 of 18 December 1992.

[33] Article 6 of Act No. 20357.

[34] *Boletín Legislativo* (BOL) No. 9818-17. Introduced by parliamentary motion on 17 December 2014. It is currently subject to an initial constitutional hearing. It seeks to amend the Criminal Code by criminalizing enforced disappearance in domestic law. Link: https://www.camara.cl/pley/pley_detalle.aspx?prmID=10240&prmBoletin=9818-17.

[35] Since the creation of the Office of the Under-Secretary for Human Rights, the bill has formed part of the Office's legislative agenda. As a result, a number of steps have been taken to expedite its adoption. The bill's introduction was followed by the submission of numerous observations, some of which were accepted and incorporated into its current wording.

40. In Chile, states of emergency are defined by the Constitution and regulated by Act No. 18.415.[36] They are strictly limited to the closed list set out in articles 39 ff. of the Constitution,[37] namely: state of alert, state of siege, state of public emergency and state of disaster. Each of these states of emergency[38] involves a restriction of people's rights. However, the guiding principles governing their application stipulate that they must be temporary and have been approved by the National Congress and the President of the Republic and that there must always be the possibility of appealing against them by bringing judicial actions to uphold the rights enshrined in the Constitution.[39]

41. With regard to the existence of terrorism laws that may jeopardize the prohibition of enforced disappearance, Chile has a law that defines terrorist conducts and establishes penalties for them,[40] regulates the detention of persons for this offence and provides for an extension of the time limit for bringing such persons before the court.[41] Detention must always be approved by a substantiated decision of the corresponding court, assisted by a court-appointed doctor, and the judge may officially revoke the decision where he or she considers this necessary. The same article establishes criminal penalties for judges who are negligent in protecting detainees.[42]

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[36] Constitutional Act No. 18.415 of the Ministry of the Interior on states of emergency, published on 14 June 1985 and substantially amended by the first democratic government through Act No. 18.906 of February 1990.

[37] The Constitution states that the exercise of the rights and guarantees accorded by it to all persons may be affected only in the following exceptional situations: external or internal war, civil unrest, public emergency and public disaster, where these seriously affect the normal functioning of State institutions.

[38] With regard to states of emergency in cases of disaster, public disaster or public emergency, constitutional norms and Act No. 18.415 give the defence chief appointed by the President of the Republic certain duties and powers, such as the power to control entry to, travel in and departure from the area where a state of public emergency and/or disaster has been declared, to give all necessary instructions for the maintenance of law and order within the area and to issue the necessary guidelines and instructions for maintaining order in the area. In this context, annex 3 to the Ministry of Defence Emergency and Civil Protection Plan 2012 contains the rules (adopted by the Ministry of Defence by means of MDN.EMCO.DOPE No. 311/8850 of 4 October 2012) governing the use of force by military forces deployed in areas where a state of public emergency and disaster has been declared. Annex 3 has four appendices, appendix 1 being particularly important. This appendix establishes the procedures for detaining, registering and disarming persons. It also gives the defence chief appointed to the area a standing order to establish a procedure for handing over persons detained by military forces to the corresponding police authorities. It states that this procedure must take place immediately after the person's arrest and that a written record must be made of the handover and of the physical condition of the detainee(s) at the time of the handover. Appendix 3 to annex 3, on supplementary procedures, contains protocols for the registration and detention of persons and also general basic rules on the treatment of detainees by military forces, stipulating that detainees must not be subjected to acts of intimidation, humiliation, ill-treatment or abuse and must be given food, shelter and medical care.

[39] Habeas corpus or *amparo* action under article 21 of the Constitution and remedy of protection under article 20.

[40] Act No. 18.314 of 16 May 1984 of the Ministry of the Interior and Public Security, last amended in 2015. Article 11 states that, where the needs of the investigation so require, the judge may, at the prosecutor's request and by a substantiated decision, extend by up to 10 days the time limits for bringing the detainee before the judge and for formalizing the investigation. By the same decision, the judge must order the detainee's placement in a prison facility and his or her medical examination by a court-appointed doctor, who must carry out the examination and report to the court on the same day as the decision.

[41] Congress is in the process of revising this law because it does not comply with human rights standards on the right to due process. BOL No. 9669-07, consolidated with BOL No. 9692-07, both introduced by parliamentary motion in 2014 and currently undergoing an initial constitutional hearing.

[42] Article 324 of the Code organizing the Chilean court system states that bribery, failure to observe the substance of the laws governing procedure, denial and distorted administration of justice and, in general, any abuse of authority or serious infringement of any of the duties that the law imposes on judges leave them subject to punishment appropriate to the nature or seriousness of the crime, as established in the Criminal Code.

Articles 2 and 4
Definition of enforced disappearance and definition as a separate offence

42. By article 6 of Act No. 20.357 of 2009 defining crimes against humanity, genocide and war crimes, Chile defined the offence of enforced disappearance as a crime against humanity, thereby bringing its domestic legislation into line with the Rome Statute.

43. Since the majority of cases of enforced disappearance occurred before the entry into force of the law defining it as a crime against humanity, the courts have invoked provisions governing other criminal offences that have elements similar to those of enforced disappearance:

(a) **Simple and aggravated abduction:** offences envisaged in article 141 of the Criminal Code, which defines simple abduction as the unlawful confinement or detention of another person, depriving that person of his or her liberty, and imposes a maximum term of ordinary imprisonment (3 years and 1 day to 5 years), the same penalty being applicable to the person who provides the place for such abduction. If the abduction is carried out in order to obtain a ransom or impose conditions or decisions, the penalty is increased to a short to medium term of rigorous imprisonment (5 years and 1 day to 15 years). If the abduction lasts for more than 15 days or results in serious injury to the victim's person or interests, the penalty is increased to a medium to maximum term of rigorous imprisonment (10 years and 1 day to 20 years). Lastly, aggravated abduction occurs when the abduction is accompanied by homicide, rape, anal rape or grievous bodily harm, the penalty being a maximum term of rigorous imprisonment to life imprisonment with restricted access to parole (at least 15 years and 1 day);

(b) **Abduction of children:** article 142 of the Criminal Code defines this offence as the abduction of a person aged under 18 and distinguishes between ordinary abduction, which is punishable by a medium to maximum term of rigorous imprisonment (10 years and 1 day to 20 years), and abduction carried out in order to obtain a ransom, impose demands or extract decisions or abduction resulting in serious physical injury to the child, in which case the penalty is a maximum term of rigorous imprisonment (at least 15 years and 1 day). The article also establishes an aggravated version of child abduction, which is defined in the same terms and is subject to the same penalties as the aggravated version of simple abduction;

(c) **Unlawful arrest:** this offence is defined and punished in article 143 of the Criminal Code and applies to a person who, in cases other than those authorized by law, arrests an individual in order to bring him or her before the authorities. The penalty is a minimum term of ordinary imprisonment (61 to 540 days) or a fine equivalent to 6 to 10 monthly tax units;

(d) **Arbitrary or unlawful arrest or detention:** this offence is defined in article 148 of the Criminal Code and applies to a public employee who arrests, detains or internally exiles another person unlawfully or arbitrarily. The penalty is a minimum to medium term of ordinary imprisonment and suspension from work (61 days to 3 years);

(e) **Offences involving restriction of the rights of persons deprived of liberty:** these offences are defined and punished in article 149 of the Criminal Code, which imposes a minimum to medium term of ordinary imprisonment and suspension from work (61 days to 3 years) in the following cases:

(i) Where the persons in charge of a prison facility take custody of an individual as a prisoner or detainee without the legal requirements having been met;

(ii) Where such persons, having taken custody of a detainee, do not notify the competent court within the following 24 hours;

(iii) Where such persons prevent detainees from communicating with the judge hearing their case and prevent charged prisoners from communicating with the judges responsible for visiting the corresponding prisons;

(iv) Where such persons refuse a prisoner's request that they transmit a copy of the detention order to the court, demand that such a copy be provided or themselves issue a certificate stating that the individual has been imprisoned;

(v) Where, in the event of arbitrary detention, persons who have the power to put an end to such detention fail to do so or, if they do not have that power, fail to inform the competent higher authority;

(vi) Where the persons who had an individual arrested do not notify the competent court within 48 hours and bring him or her before the court.

(f) **Offences involving incommunicado and secret detention:** these more specific offences are defined and punished in article 150 of the Criminal Code. The offence of incommunicado detention is committed when a person deprived of liberty is kept incommunicado or is treated with undue severity. Secret detention is committed when a person is arbitrarily arrested and detained in places other than those established by law. These offences are punishable by ordinary imprisonment (61 days to 5 years). Where persons other than public officials commit them, the penalty is a minimum to medium term of ordinary imprisonment (61 days to 3 years);

(g) **Torture:**[43] article 150 A of the Criminal Code defines this offence as any act by which severe pain or suffering, whether physical, sexual or mental, is intentionally inflicted on a person for such purposes as obtaining from him or her or a third person information, a statement or a confession, punishing him or her for an act that he or she has committed or is suspected of having committed or intimidating or coercing him or her, or for reasons based on discrimination on such grounds as ideology, political views, religion or beliefs, nationality, race, ethnicity or social group, sex, sexual orientation, gender identity, age, family situation, personal appearance, state of health or disability. It also defines torture as the intentional use of methods intended to obliterate the personality of the victim or to diminish his or her physical or mental capacities for one of the purposes referred to in the preceding sentence;

(h) **Torture aggravated by an offence:** article 150 B of the Criminal Code defines torture as aggravated when an additional offence is committed. More severe penalties are imposed when torture is accompanied by other offences;

(i) **Unlawful coercion not amounting to torture:** this offence is defined and punished by article 150 D of the Criminal Code, which criminalizes offences other than torture. A medium to maximum term of ordinary imprisonment (541 days to 5 years) is imposed on a public employee who, abusing his or her position, applies, orders or consents to the application of unlawful coercion or other cruel, inhuman or degrading treatment not amounting to torture. The same penalty applies to a public official who, knowing that such conduct is taking place, fails to prevent or put a stop to it when he or she has the power or is in a position to do so. The penalty is increased when the victim is a minor, is in a vulnerable position because of disability, illness or old age or is under the public employee's care, custody or control;

(j) **Unlawful coercion aggravated by an offence:** article 150 E of the Criminal Code defines this as occurring when coercion is accompanied by another offence, in which case the penalty is increased. In the event of homicide, the penalty is increased to life imprisonment;

(k) **Residual offence of participation in relation to articles 150 D and E of the Criminal Code:** this offence is envisaged in article 150 F of the Criminal Code, which punishes participants in the offences listed above who are not public officials.

44. In order to make progress in complying with the obligation to bring domestic legislation into line with international standards, the National Congress has begun

[43] The offence of torture was recently redefined by Act No. 20.968 criminalizing torture and cruel, inhuman and degrading treatment, published on 22 November 2016, which brought the definition of torture into line with international standards.

considering a bill[44] that would amend the Criminal Code to include the offence of enforced disappearance. The members of the Chamber of Deputies who put forward the bill considered the relevant treaties ratified by Chile. It should be noted that, at the outset, the bill emerged from the ongoing, systematic work being done with various human rights groups, especially groups of relatives of disappeared prisoners.[45]

45. In May 2017, the Committee on Human Rights and Indigenous Peoples of the Chamber of Deputies adopted the bill, which would criminalize enforced disappearance in ordinary law, unanimously at its first constitutional hearing. The original version of the bill was amended substantially in the course of its consideration.

46. The bill was the subject of intense debate. Following its discussion and inputs from invited participants, a replacement text was introduced, of which the following are highlights:

- The definition of the offence (article 148 A) establishes that the perpetrator of enforced disappearance must be a public employee — a condition that did not appear in the original text — or a private individual acting with the authorization, support or acquiescence of the State;
- The bill establishes a harsher penalty than that proposed in the original text for the basic offence of enforced disappearance: a medium term of rigorous imprisonment (10 years and 1 day to 15 years);
- The bill includes a provision applying the same penalty to a public employee who, being aware of the facts, fails to prevent or put an end to the enforced disappearance, despite having the necessary power or authority or being in a position to do so;
- The bill defines some aggravated forms of enforced disappearance;
- The bill establishes that criminal proceedings and penalties are not subject to statutory limitations;
- The bill defines as aggravating circumstances the enforced disappearance of pregnant women, children aged under 18, persons aged over 65 and persons with disabilities;
- The bill stipulates that if the offence is committed by members of the armed forces or the police against one of their members, the case must be heard by the ordinary courts;
- The bill includes an amendment to article 335 of the Code of Military Justice to the effect that anyone who receives orders calling for, authorizing or encouraging the commission of crimes against humanity, genocide, torture, cruel, inhuman or degrading treatment or enforced disappearance has the right and the duty not to obey them.

Article 3
Measures taken to investigate and punish enforced disappearance

47. In cases of enforced disappearance, the criminal investigation is conducted exclusively by the Public Prosecution Service, the body responsible for bringing public criminal proceedings for all acts occurring after the entry into force of the amended Code of Criminal Procedure,[46] as provided by the Constitution and the Act organizing the Public Prosecution Service.[47] This is without prejudice to the existence of the National Human

[44] Introduced on 17 December 2014. BOL No. 9818-17. Amends the Criminal Code by creating the offence of enforced disappearance. It is currently undergoing a second constitutional hearing in the Senate Committee on the Constitution, Legislation, Justice and Regulations.

[45] Minutes of ordinary meeting No. 109 of the Chamber of Deputies of 18 December 2014, p. 111.

[46] The amended Code of Criminal Procedure came into force between 2000 and 2005, as it was applied gradually in the different regions of the country.

[47] Act No. 19.640 organizing the Public Prosecution Service, published on 15 October 1999.

Rights Institute and its mandate, contained in Act No. 20.405, which authorizes the Institute to bring judicial actions in cases of enforced disappearance.[48]

48. With respect to enforced disappearances occurring after 1990, there are no conclusive data on the number of judicial proceedings in which such disappearances were investigated between 1990 and 2016. After the transition to democracy, enforced disappearance ceased to be a systematic State practice, with the result that there were no bodies specifically entrusted with addressing this problem. Since enforced disappearance has not been criminalized (until 2009, it was defined as a crime against humanity and only now is a bill being considered that would make it an ordinary offence), it is very complicated for State bodies to calculate the number of such cases. Nonetheless, the judiciary has identified at least three cases of enforced disappearance that occurred during this period: that of José Vergara Morales (which occurred in 2015 and is currently being investigated by the Public Prosecution Service), that of José Huenante (which occurred in 2005 and in which the Public Prosecution Service is investigating civilians and the Military Prosecutor's Office is investigating the police officers involved) and that of Hugo Arispe Carvajal (which occurred in 2001 and the preliminary investigation of which is being carried out by the third criminal court of Arica). For more details, see the information given in relation to article 12.

49. As of now, trials are under way in 381 cases of enforced disappearance that occurred between 1973 and 1990. Of these, 146 are at the preliminary stage, 42 are at the full trial stage, 91 have resulted in a judgment and two others are at different procedural stages, accounting for a total of 584 victims.

50. In these cases, the Office of the Under-Secretary for Human Rights plays a coordinating role, through the Human Rights Programme Unit, with respect to judicial proceedings related to the period of military dictatorship (1973 to 1990). In 2017, following an increase in the Unit's budget, a search and investigation team was set up[49] to establish the fate of victims of enforced disappearance during the dictatorship. The team's first task is the investigation into Operation "Removal of TVs".[50] The Under-Secretary's Office has also pushed for the drafting and signing of agreements with other institutions and is responsible for establishing public policy on the issue. One of the mandatory components of the National Human Rights Plan being drawn up by the Office is the promotion of the investigation, punishment and reparation of crimes against humanity, genocide and war crimes.

51. The inter-institutional forum set up to assist the justice system in the search for victims of enforced disappearance under the dictatorship has been in operation since 2016. Its primary function is to draw up a protocol for coordinated work and to meet on an ad hoc basis whenever a case so requires. The forum comprises the Special Forensic Identification Unit of the Forensic Medical Service (the coordinating institution); the Human Rights Programme Unit; Mario Carroza and Marinela Cifuentes, the Santiago and San Miguel special investigating judges for human rights violations; the Human Rights Unit of the Civil Registry and Identity Service; the Human Rights Brigade of the Investigative Police; and the Public Prosecution Service.

52. Another current example of coordination is the Patio 29 inter-institutional forum, which has been in operation since October 2015 and is made up of the Special Forensic Identification Unit, which coordinates the forum, the Human Rights Programme Unit, two special investigating judges who are investigating crimes committed by the dictatorship, the Human Rights Unit of the Civil Registry and Identity Service and the Human Rights

[48] As demonstrated by the filing of criminal complaints in the three cases of enforced disappearance that occurred after the transition to democracy, namely, those of José Gerardo Huenante Huenante, Hugo Arispe Carvajal and José Antonio Vergara Espinoza.

[49] According to Act No. 20.981 on the budget appropriation for the Human Rights Programme of the Ministry of Justice and Human Rights, notes 4 and 5, which amounts to 1,691,634 million pesos.

[50] Operation "Removal of TVs" was the code name for the operation in late 1975 to disinter the corpses of victims of political executions carried out under the military dictatorship. Judicially, the operation gave rise to a large number of lawsuits alleging enforced disappearance, but since the victims' remains have not been found, their cases cannot be treated as cases of political execution.

Brigade of the Investigative Police. For more details, see the information provided in relation to article 19.

53. With regard to measures taken by the judiciary to investigate and punish acts of enforced disappearance, in 2001 for the first time the Supreme Court appointed nine judges responsible exclusively for investigating 114 cases of enforced disappearance committed under the dictatorship.[51] In 2002 and 2004, these appointments were extended and in 2009,[52] a Supreme Court judge was appointed for the first time to coordinate the investigations. More recently, the Supreme Court appointed 32 appeal court judges throughout Chile who are currently conducting 1,269 trials for enforced disappearance, execution and torture.

54. The Forensic Medical Service, which comes under the authority of the Ministry of Justice and Human Rights, works with the judiciary by providing forensic expertise in situations where a victim needs to be identified and the causes of death established. The Service also cooperates in court-ordered searches for human remains.

55. The Investigative Police have a unit for the investigation of human rights offences,[53] which is available to the courts and processes information that could shed light on the circumstances of an offence and police participation in it. Its members are specialized in human rights and it is one of the institutions whose officers and staff receive regular training from the National Human Rights Institute. The unit has been in operation since the early 1990s and originally came under the authority of internal affairs department V of the Investigative Police. In 2004, it became the Human Rights Brigade. In addition to investigating cases that occurred under the dictatorship, it investigates current cases involving offences of undue violence, illegal arrest and abduction. It also coordinates with the Public Prosecution Service in investigating acts of this nature that take place in prisons.

Article 5
Enforced disappearance as a crime against humanity

56. By Act No. 20.357 published on 18 July 2009, Chile ratified the Rome Statute of the International Criminal Court and brought its domestic legislation into line with its international obligations, the aim being to harmonize Chilean law by criminalizing conducts that constitute international crimes and to comply with the preamble to the Statute, whereby it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes.[54]

57. With regard to the model adopted by Chile, in the general discussion in the Senate it was noted that the parliamentary motion on the criminalization of enforced disappearance in domestic law followed the German model by referring to the Rome Statute itself and describing the conducts defined therein.[55] Article 6 of Act No. 20.357 defines enforced disappearance as a crime against humanity when committed as part of a widespread[56] or systematic attack directed against the civilian population. For the penalty applicable to that

[51] On 20 June 2001, the Supreme Court appointed nine appeal court investigating judges with exclusive responsibility for cases of enforced disappearance and instructed them to report regularly to the full Court.

[52] On 13 May 2009, the full Supreme Court ordered the investigating judges to coordinate with it and with other institutions supporting their investigations and to keep a statistical record of cases.

[53] Unit for the investigation of offences against human rights and persons, under the authority of the Office of the National Head for Human Rights Offences of the Investigative Police, created in November 2007.

[54] Library of the National Congress. *Historia de la Ley núm. 20357 que "Tipifica Crímenes de lesa humanidad y Genocidio y Crímenes y Delitos de Guerra"* (History of Act No. 20.357 defining crimes against humanity, genocide and war crimes), p. 5.

[55] Ibidem, p. 34.

[56] Act No. 20.357 defines "widespread attack" as a situation where one or more acts occurring simultaneously or in rapid succession affect or target a considerable number of people. It defines "systematic attack" as a series of acts occurring over a period of time that affect or target a considerable number of people.

conduct, it refers back to the penalty for aggravated abduction contained in article 141 of the Criminal Code.

Article 6
Criminal responsibility and superior orders

58. The Chilean Criminal Code defines the different forms of punishable participation,[57] namely, personal or direct participation, indirect participation through another person or means and joint or shared commission of an offence.[58] The Code of Military Justice also contains a special norm, set out in articles 211 and 214,[59] which expressly recognizes superior responsibility by placing full responsibility on the person who orders the commission of an offence. This norm applies where there was prior agreement between the superior and the subordinate or where the subordinate did not oppose the order or exceeded it, meaning that both are punished.

59. According to the principles of criminal responsibility set forth in the preceding paragraph, Chile can be said to duly define superior responsibility and to have at its disposal legal instruments for holding superiors responsible, regardless of their degree of participation and seniority, without prejudice to the existence of precise rules on the circumstances in which a subordinate may legitimately oppose a superior order to commit a crime.[60]

60. In the context of international crimes, Act No. 20.357[61] contains express norms assigning responsibility to military commanders or authorities who, being in a position to prevent a crime, do not do so or fail to notify the competent authorities.

61. In cases of enforced disappearance prosecuted since 2004, the Supreme Court has maintained that military authorities cannot be exempted from criminal responsibility for the actions of their subordinates.[62] In response to exculpatory arguments based on the Code of Military Justice, the judiciary has ruled that enforced disappearance, extrajudicial execution and torture are not "acts carried out in the line of duty".

62. Under domestic law, orders that impose an obligation on subordinates to obey them must fulfil the following requirements: (i) the order must have been given by a superior; (ii) the order must be duty-related (according to article 421 of the Code of Military Justice, "act carried out in the line of duty" means any act related to the duties incumbent on all soldiers by reason of their membership of the armed forces); (iii) the order must have been given in exercise of lawful powers; and (iv) if it is clearly directed at the perpetration of an offence, the order must have been opposed by the subordinate and insisted upon by the superior.

63. Chile acknowledges that there are still areas of military justice that do not conform to international standards.[63] For details on military jurisdiction, see the information given in

[57] Articles 14, 15 and 16 of the Criminal Code.

[58] Paragraph 1 of article 15 of the Criminal Code defines direct perpetration of an offence, with slight variations to cover shared perpetration; paragraph 2 defines incitement or coercion of another person to commit a crime; and paragraph 3 basically defines joint perpetration and complicity in some cases.

[59] Article 214 of the Code of Military Justice states that when an offence has been committed in the line of duty, the superior who gave the order to commit it shall be solely responsible, unless there was prior agreement, in which case everyone who agreed shall be responsible. A subordinate who, except in the case referred to in the final part of the preceding paragraph of the article, exceeds an order or, if the order is clearly directed at the commission of an offence, fails to comply with the formality in article 335 shall be liable to a less severe penalty than that legally applicable to the offence.

[60] Article 335 of the Code of Military Justice.

[61] Articles 35 and 36 of Act No. 20.357.

[62] For example, Supreme Court judgments Nos. 517-2004, 4427-2007, 3841-2012, 2, 22.652-2014 and 15.963-2106.

[63] To date, the Ministry of Defence has drawn up two preliminary bills, one on a new code of military justice and one on rules for bringing the Code of Military Justice into line with international standards. The bills are designed to restructure military justice organizationally and procedurally, to amend the offences defined in the current Code and to enact special laws to incorporate into military justice the

relation to article 11. It should be added that in the case of *Palamara Iribarne v. Chile*,[64] the Inter-American Court of Human Rights held that military jurisdiction should be applied only to offences that are committed by soldiers and that affect military legal interests. In all other cases, ordinary jurisdiction should be applied, either because the accused is a civilian or because the legal interest is both civilian and military.

64. The bill amending the Criminal Code in order to criminalize enforced disappearance[65] includes an amendment to the Code of Military Justice[66] whereby anyone who receives orders that call for, authorize or encourage the commission of the crimes against humanity, genocide and war crimes defined in Act No. 20.357 or the offences of torture or cruel, inhuman or degrading treatment or enforced disappearance defined in the Criminal Code would have the right and the duty not to obey them.[67]

65. The situation with regard to the internal rules of military, law enforcement and security institutions is mixed. Investigative Police procedures do not include any procedure for lawfully opposing an order to commit acts of enforced disappearance.[68]

66. Article 214 of the Code of Military Justice states that when an offence has been committed in the line of duty, the superior who gave the order to commit it shall be solely responsible, unless there was prior agreement, in which case everyone who agreed shall be responsible. As for the circumstances in which a subordinate is allowed lawfully to oppose an order to commit acts of enforced disappearance, article 334 of the Code establishes the general rule that all soldiers have an obligation, except in cases of force majeure, to obey an order given lawfully by a superior. Article 335 of the Code states that if the order was clearly directed at the commission of an offence, a subordinate may delay obeying it and, in an emergency, amend it, notifying the superior immediately. If the superior insists on the order, it must be obeyed. This reasoning is repeated in the disciplinary sphere, in that rule 20 of the armed forces disciplinary rules, applicable to the army and the air force, regulates due obedience and exceptions thereto in the same terms as the Code of Military Justice. The navy disciplinary rules are different, in that rule 612 states that any subordinate who receives an order that he or she considers to be against the law shall, either orally or in writing, respectfully so inform the officer who gave the order. If the officer insists on the order, the subordinate must obey it immediately. The subordinate has the right to notify the corresponding superiors in writing.

67. Articles 334 and 335 of the Code of Military Justice apply when the concept of due obedience is used as a defence in criminal trials.

68. In the regulatory sphere, a distinction must be made among branches of the armed forces. Rule 22 of the Army General Ordinance (Ministry of Defence Supreme Decree No. 86 of 2006) establishes that responsibility before different entities, agencies and bodies for decisions taken rests with the superior who took the decisions and that subordinates must obey them as long as they do not involve the commission of an offence. Rule 172 of the Navy General Ordinance (Ministry of Defence Supreme Decree No. 487 of 1988) states that subordination applies not only to persons but also to the laws, rules and orders that must be obeyed. It specifies that whatever the rule demands cannot be altered and that

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parameters of a modern judicial procedure that guarantees human rights, along the lines of the procedure currently applicable in the ordinary system of criminal procedure.

[64] Inter-American Court of Human Rights, case of *Palamara Iribarne v. Chile*, para. 132. The Court reiterated this position in the case of *Almonacid Arrellano v. Chile*, para. 131.

[65] BOL No. 9818-07, bill amending the Criminal Code to include the offence of enforced disappearance, which is currently undergoing an initial constitutional hearing before the Human Rights Committee of the Chamber of Deputies.

[66] Amending and adding a second paragraph to article 335 of the Code of Military Justice.

[67] Wording proposed and approved in particular by the Human Rights Committee of the Chamber of Deputies at its 15 March 2017 meeting.

[68] However, the staff disciplinary rules of the Investigative Police include a specific section on disciplinary rules and due obedience. Rule 4 states that staff members have a duty to obey the order of a competent superior, but if they consider that order to be illegal or against the rules, they must oppose it in writing. If the superior insists, the staff member must carry out the order but will not be held responsible, responsibility resting solely with the superior who gave the order. In serious, urgent cases, such opposition and insistence may be made orally.

whatever the rule prohibits cannot be demanded. Lastly, rule 176 of the Air Force General Ordinance (adopted by resolution E No. 160 of the Air Force Commander in Chief) states that orders must be obeyed without question unless they are clearly directed at the commission of an offence, in which case the procedures laid down in the Code of Military Justice must be followed. All branches of the armed forces, in their own way, thus establish exceptions to due obedience in cases where obeying an order involves breaking the law. These general norms are of course applicable to cases of enforced disappearance, since the latter breaches one or more legal provisions, as already established in relation to articles 2 and 4 of the Convention.

Article 7
Punishment and proportionality of the penalty

69. The penalties established by article 7 of Act No. 20.357 for the offence of enforced disappearance are the same as those envisaged in article 141 of the Criminal Code. Simple abduction is punishable by a maximum term of ordinary imprisonment (3 years and 1 day to 5 years), while aggravated abduction is punishable by a minimum term of rigorous imprisonment to rigorous imprisonment for life with restricted access to parole (at least 5 years and 1 day). The maximum penalty imposed by the domestic legal system is rigorous imprisonment for life with restricted access to parole, meaning at least 40 years without any possibility of enjoying benefits that would permit the sentence to be served outside prison.[69]

70. With regard to the application of aggravating circumstances in cases of enforced disappearance, especially in the event of the death of the disappeared person or the enforced disappearance of pregnant women, minors, persons with disabilities or other particularly vulnerable persons, in none of these cases is there any domestic legislation that is fully in line with the Convention. However, the bill currently under consideration that would make enforced disappearance an ordinary offence under the Criminal Code does establish as an aggravating circumstance the perpetration of this offence against persons belonging to vulnerable groups.

71. In cases of serious human rights violations occurring under the dictatorship, which must be prosecuted according to the criminal law in force at the time, enforced disappearance resulting in the victim's death gives rise to a real or consequential concurrence between the offences of abduction and murder that must be resolved by applying the provisions of articles 74[70] or 75[71] of the Criminal Code and will result in a harsher penalty being imposed on the culprit. The same rule would apply if the victim was a pregnant woman and the abduction resulted in the concurrent offence of violent abortion.

72. Ordinary aggravating circumstances are listed in article 12 of the Criminal Code, to which a new aggravating circumstance was added recently[72] in order to increase the criminal responsibility of persons who commit offences against persons belonging to vulnerable groups.[73] There have already been criminal convictions applying this aggravating circumstance.[74]

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[69] Articles 32 bis and 59 of the Criminal Code.

[70] Article 74 of the Criminal Code states that a person convicted of two or more offences shall be subject to all the penalties corresponding to the different offences and, wherever possible, shall serve all sentences simultaneously. Where this is not possible or would render one of the sentences illusory, they shall be served successively, starting with the most serious offences and hence the harshest penalties on the corresponding scale, except for the penalties of banishment, exile, internal exile or local banishment, which shall be served after any other penalties on gradual scale 1.

[71] Article 75 of the Criminal Code states that article 74 shall not apply when one act constitutes two or more offences or when one offence is the necessary means for committing the other. In such cases, only the harshest penalty for the most serious offence shall be imposed.

[72] With the promulgation on 24 July 2012 of Act No. 20.609 establishing measures against discrimination, which amended various laws in order to promote anti-discrimination legislation.

[73] Article 12 (21) of the Criminal Code, as amended by Act No. 20.609 of 24 July 2012, adds the following aggravating circumstance: committing or participating in an offence motivated by the

73. The only mitigating circumstance whose application would comply with the Convention is that provided for in article 11 (9) of the Criminal Code in connection with the accused person's assistance in investigating the facts.

74. As to how the offence of enforced disappearance is punished, Chile has noted the obligation of States to impose appropriate penalties that take into account its extreme seriousness. That is why the bill under consideration proposes a basic penalty of a minimum to medium term of rigorous imprisonment (5 years and 1 day to 15 years), a medium to maximum term of rigorous imprisonment (10 years and 1 day to 20 years) in cases where the victim is seriously injured and a maximum term of rigorous imprisonment or imprisonment for life with restricted access to parole (at least 15 years and 1 day) for enforced disappearance committed in conjunction with murder, torture, rape or grievous bodily harm.

75. Under Act No. 18.216, persons sentenced to imprisonment may be eligible for an alternative sentence in which deprivation of liberty is replaced by another form of punishment. Persons convicted of crimes committed under the dictatorship have been allowed to serve such alternative sentences because, until 2012, the high courts often invoked the concept of a partial lapse of the statute of limitations, set out in article 103 of the Criminal Code, in order to reduce sentences and permit their replacement. The Supreme Court has taken a variety of decisions on the application of this concept, which the Working Group on Enforced or Involuntary Disappearances described as contrary to the Declaration, stating that "if the effect of the partial lapse of statute of limitations is to preclude effective punishment, as required under the Declaration, it should not be applied".

76. The rules for obtaining a reduction of sentence are laid down in Act No. 19.856 and establish a two-stage administrative procedure. First, the conduct of the convicted prisoner is evaluated by an expert panel according to criteria established in article 7 of the Act (study, work, rehabilitation, behaviour). Only those who score "outstanding" may apply to have their sentence reduced. Next, the application is forwarded to the Ministry of Justice and Human Rights, which can only evaluate compliance with matters of form and whether or not there are grounds for refusal, as set out in article 17. If the prisoner's score is outstanding and there are no grounds for refusal, the reduction of sentence is granted. Specific grounds for refusal include breaching the terms of the sentence, escaping, breaching parole conditions, committing a crime while serving the sentence or serving a sentence of life imprisonment. They do not include serving a sentence for human rights offences.

77. In 2016, five applications were made for a reduction of sentence. The social reintegration section of the Ministry of Justice and Human Rights rejected all of them, chiefly by invoking international human rights treaties signed by Chile and the obligation to ensure that persons convicted of serious, mass and systematic human rights violations effectively serve their custodial sentences. Four of the applicants appealed against the rejection of their applications by filing remedies of protection. The Santiago Appeal Court and the Supreme Court ruled in the applicants' favour, arguing that none of the specific grounds for refusal listed in article 17 of Act No. 18.216 was applicable.

78. Parole must be distinguished from benefits enjoyed inside prison. In the Chilean prison system, it is normal to grant in-prison benefits first and then, if the prisoner's conduct is good and the benefits have been used properly, he or she may apply for parole. The latest amendments made to the prison regulations by Ministry of Justice and Human Rights Decree No. 924 of 22 February 2017 imposed restrictions on the granting of in-prison benefits to prisoners convicted of human rights violations. As a result, the only prisoners convicted of human right violations who are eligible for such benefits are those who, in addition to meeting the general requirements, fulfil the following conditions: (i) have shown remorse for their crimes; (ii) have been given a favourable report adopted

victim's ideology, political views, religion or beliefs, nationality, race, ethnicity or social group or sex, gender identity, age, family situation, personal appearance, illness or disability.

[74] For example, the sentence handed down by the Criminal Court on 6 April 2015 in case No. 1400496389-0 and the sentence handed down in summary trial by the Viña del Mar district judge on 22 May 2015 in the Felipe Villarroel Álvarez case.

unanimously by the corresponding expert panel; (iii) have had their application approved by the prison governor and confirmed by the corresponding regional director; and (iv) can prove by whatever means are appropriate that they provided reliable, effective information on cases involving similar crimes. For these purposes, account is taken of cooperation given in cases in which the prisoner is currently being investigated or tried or has been tried, even if such cooperation was given after sentencing and conviction. The same rule applies to cooperation given in similar cases brought against other persons.

79. There has been ongoing public debate about in-prison benefits and the granting of alternatives to prison for persons convicted of human rights violations. This is reflected in the positions taken in legislative proposals, which range from imposing an outright ban on in-prison benefits or alternatives to prison to regulating them by imposing limits that are in line with the Rome Statute. Different bills[75] have been introduced in this regard, in particular the bill replacing Decree-Law No. 321 of 1925 establishing parole for convicted prisoners (BOL No. 10696-07), consideration of which has advanced the furthest (third constitutional hearing). This bill is important in that most of the system of prisoner benefits is based on the parole system and the rules governing it, and the bill sets the standards of conduct according to which benefits are granted. The bill originated in a parliamentary motion that was submitted to the Senate in May 2016. After the Senate rejected the amendments proposed by the Chamber of Deputies,[76] the bill passed to a joint committee last December. The committee has not yet met.

80. In May 2017, Chile sent the Working Group a follow-up table describing the action taken to implement the recommendations made by the Group following its visit to the country in 2012. In it, it asked the Group to issue guidelines for the drafting of the relevant law on the granting of in-prison benefits and alternatives to prison to ensure that it conforms to international standards. Chile understands that this is a complex issue involving principles such as the proportionality of the penalty in cases of systematic human right violations and the right of persons deprived of their liberty to be granted benefits and alternatives to prison. It now makes the same request to the Committee.[77]

[75] Bill amending Act No. 20.357 defining crimes against humanity, genocide and war crimes, which states that, in view of the seriousness of such crimes, persons convicted of them shall be ineligible for in-prison benefits (BOL No. 8600-07); bill permitting the application of strictly monitored parole on humanitarian grounds (BOL No. 10740-07); bill amending article 87 of the Criminal Code to establish alternatives to prison (BOL No. 10745-07); bill amending article 86 of the Criminal Code to establish alternatives to prison (BOL No. 10746-07); and bill permitting the application of strictly monitored parole on humanitarian grounds to convicted prisoners who are seriously ill (BOL No. 10740-07).

[76] One of the most significant differences relates to crimes against humanity and, specifically, human rights violations committed during the dictatorship. The wording adopted by the Senate states that persons convicted under Act No. 20.357 defining crimes against humanity, genocide and war crimes may apply for parole only after they have served two thirds of their sentence. This excludes such crimes committed before the Act's entry into force. The Chamber of Deputies adopted more restrictive wording, stating that persons convicted of offences of murder, aggravated homicide, rape, abduction, child abduction, unlawful arrest, torture or unnecessary force and unlawful association shall not be granted the benefit of parole in the following circumstances: (a) the punishable acts occurred between 11 September 1973 and 10 March 1990; and (b) the convicted persons acted as agents of the State, either as public officials or as private individuals exercising public functions or acting with the acquiescence or consent or at the instigation of a public official. Persons convicted of the crimes listed in Act No. 20.357 shall not be granted the benefit of parole. A joint congressional committee will now have to take a decision on the bill's future.

[77] The Ministry of Justice and Human Rights is currently carrying out a study with a view to incorporating international human rights standards into domestic legislation on enforcement of sentences, especially in the case of persons convicted of crimes against humanity.

Article 8
Statute of limitations in respect of the offence of enforced disappearance

81. The offence of enforced disappearance is recognized in law by Act No. 20.357,[78] which defines crimes against humanity, genocide and war crimes but does not apply to crimes committed before its entry into force.[79]

82. Cases of enforced disappearance committed under the dictatorship have been investigated by the judiciary, which increasingly has applied international standards in its jurisprudence. Until 10 years ago, criminal cases continued to be subject to statutory limitations. The last occasion on which the judiciary applied this concept was in the Jacqueline Binfa Contreras case in 2008.[80] Since then, the high courts have argued directly on the basis of the jus cogens norm requiring States to investigate, prosecute and punish serious human rights violations, regardless of how much time has elapsed. As a result, the statute of limitations for criminal proceedings is not currently an obstacle to pursuing legal proceedings.

83. With regard to the amendment of domestic legislation in the light of the international standards on statutory limitations, there are two bills that seek to establish the non-applicability of statutory limitations to war crimes and crimes against humanity: (i) bill amending the Constitution to establish that war crimes, crimes against humanity and genocide cannot be subject to statutory limitations or amnesties (BOL No. 9748-07, introduced by presidential message on 10 December 2014 and currently undergoing an initial constitutional hearing);[81] and (ii) bill determining the meaning and scope of criminal law with respect to amnesties, pardons and statutory limitations on criminal proceedings and sentences in the light of the provisions of international law on genocide, crimes against humanity and war crimes (BOL No. 9773-07), introduced by presidential message on 10 December 2014 and currently undergoing an initial constitutional hearing.[82] Both bills have been given priority in the Government's programme and are among the portfolio of bills prioritized by the Office of the Under-Secretary for Human Rights.

84. A bill calling for ratification of the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, adopted by United Nations General Assembly resolution 2391(XXIII) of 26 November 1968, has also been introduced (BOL No. 1265-10).[83]

85. With regard to the current legal status of cases of enforced disappearance and following the argument that this is one of the offences that the dominant legal theory[84] and practice define as continuous or ongoing,[85] such cases are protected from statutory limitations, even if they were not committed in the context of a war crime or a crime

[78] Act No. 20.357 published on 18 July 2009.

[79] Under article 44, acts committed before the Act's promulgation shall continue to be governed by the legislation in force at the time. The Act's provisions are applicable to acts that commenced after its entry into force on 18 July 2009.

[80] Supreme Court judgment of 22 January 2009 in case No. 4329-2008, "Disappearance of Jacqueline Binfa Contreras".

[81] https://www.camara.cl/pley_detalle.aspx?prmID=10193&prmBoletin=9748-07.

[82] https://www.camara.cl/pley_detalle.aspx?prmID=10192&prmBoletin=9773-07.

[83] https://camara.cl/pley/pley_detalle.aspx?prmID=657.

[84] Cury, Enrique, *Derecho Penal Parte General*, Ed. Juridica de Chile, Santiago, 1992, Tomo II, p. 264; Etcheberry, Alfredo, *Derecho Penal*, ed. Juridica de Chile, Santiago, 1997, Tomo I, p. 226; Politoff, Matus Ramirez, *Lecciones de Derecho Penal Chileno Parte General*, Ed. Juridica de Chile, Santiago, 2003, pp. 190–191.

[85] Supreme Court judgment of 17 November 2004, case No. 517-2004, thirty-sixth preambular paragraph.

against humanity, because they are understood to involve an offence, the commission of which is ongoing.[86]

86. Article 250 of the new Code of Criminal Procedure (2000) takes up this point when it establishes an exception to dismissal of proceedings, whereby a judge may not order dismissal of proceedings with respect to offences that, under the applicable international treaties ratified by Chile, are not subject to statutory limitations or amnesties, save in the cases set forth in article 93 (1) and (2) of the Criminal Code.

87. With regard to civil proceedings in which relatives of victims of enforced disappearance seek reparation in the form of State compensation, Supreme Court judgments have fluctuated between declaring civil actions for compensation time-barred[87] by virtue of the provisions of the Civil Code[88] and affirming that, by virtue of articles 1.1 and 63.1 of the American Convention on Human Rights, such action is not time-barred, in which case the State has an obligation to compensate victims of serious, mass violations of human rights and not to invoke its legislation to justify doing otherwise, since its international responsibility is engaged. The Court has also ruled that the granting of pensions under Act No. 19.123 does not preclude victims from obtaining compensation by filing a claim for moral prejudice.[89]

88. With regard to remedies for contesting a decision to apply statutory limitations in civil and criminal proceedings, victims can use the remedies of appeal[90] and annulment on grounds of form and substance[91] to request high courts to review the evaluation of the facts and the application of the law in the case in question.

Article 9
Investigation and punishment of acts of enforced disappearance committed in territory under the State's jurisdiction

89. In Chile, jurisdiction is established according to the principle of territoriality of criminal law set out in article 5 of the Criminal Code, which states that Chilean law is binding on all inhabitants of the Republic, including foreign nationals. Consequently, all offences committed in Chilean territory, including the territorial sea and adjacent waters, must be investigated by the Public Prosecution Service, irrespective of the nationality of the person who committed the offence.

90. Article 6 of the Code organizing the Chilean court system establishes the cases in which Chilean courts have jurisdiction to try crimes and offences committed outside the country. In particular, paragraph 4 of that article states that crimes and offences committed by Chileans or foreign nationals on board a Chilean ship on the high seas or on board a Chilean warship in the waters of another State shall be subject to Chilean jurisdiction.

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[86] In such offences, a moment occurs when the criminal conduct is complete, but then a state or situation arises that may continue over time, meaning that the conduct persists. As a result, the statute of limitations provided for in articles 93 ff. of the Criminal Code is not applicable.

[87] Supreme Court judgment in case No. 10665-2011, "González Galeno Episode", 21 January 2013.

[88] Articles 2332 and 2497 of the Civil Code.

[89] See, for example, the recent Supreme Court judgment in case No. 62211-2016 of 23 January 2017.

[90] In articles 186 ff. of the Code of Civil Procedure, articles 54 bis ff. of the old Code of Criminal Procedure and article 149 of the new Code of Criminal Procedure only with respect to pretrial detention. This remedy enables higher courts to review the evaluation of the facts and the application of the law in the actual case.

[91] In articles 764 ff. of the new Code of Criminal Procedure and articles 541 ff. of the old Code of Criminal Procedure. These remedies are characterized by their specific formal requirements and grounds, which relate to the application of the law and the breaches committed by judges when handing down sentences.

Article 10
Obligation to notify another State of the detention of one of its nationals

91. Chile has set up a body to ensure the right of all persons to receive consular assistance in the event of detention. The inter-institutional forum on migrants' access to justice was set up in 2014 and comprises the Public Criminal Defence Service (its coordinating institution), the Public Prosecution Service, the Ministry of Justice and Human Rights, the Carabineros, the Investigative Police, the National Human Rights Institute and the Ministry of Foreign Affairs. It originated in a 2013 agreement confirming the commitments made to adapt and create a series of instruments for improving foreign nationals' access to the criminal justice system.

92. With regard to the detention of foreign nationals, an inter-institutional protocol drawn up by the forum establishes that police officers must inform accused or detained foreign nationals immediately that they have a right to request consular assistance pursuant to article 36 of the 1963 Vienna Convention on Consular Relations, which is binding on Chile.

93. Standard reports of the detention of foreign nationals have been drawn up in different languages and contain a list of the rights granted them by the legal system, including the right for their consular representative to be informed of their situation immediately and to provide consular assistance if they so wish. As soon as a foreign national is detained, arrested or imprisoned in Chile or is the victim of a crime, the police issue a report in various languages stating that a foreign national has been detained or has been the victim of a crime and they notify the Public Prosecution Service and the Public Criminal Defence Service by email, attaching the report. At the same time, they notify the consular legal department of the Ministry of Foreign Affairs and the person designated by the corresponding consular office for that purpose.

Article 11
Jurisdiction and competence to investigate and punish the offence of enforced disappearance

94. Chile has no specific regulations empowering domestic courts to exercise universal jurisdiction over the offence of enforced disappearance. The authorities competent to institute criminal proceedings are the Public Prosecution Service[92] and, in cases occurring prior to the 2000 reform of the criminal justice system, lower criminal court judges. In 2001, the full Supreme Court agreed that cases of human rights violations that occurred between 11 September 1973 and 10 March 1990 would be tried and judged by a special investigating appeal court judge.

95. The Public Prosecution Service is responsible for the investigatory stage of criminal proceedings, working in cooperation with the police and potentially consulting the supervisory judge[93] on measures affecting the rights of the accused. Investigations are conducted in full compliance with the principles of presumption of innocence, disclosure, immediacy and adversariality. Accused persons are entitled to be assisted by legal counsel as soon as action is taken against them, to participate in all stages of the proceedings and to be tried in public oral proceedings by an impartial court that determines their responsibility in accordance with the law.[94]

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[92] Articles 3 and 53 of the Code of Criminal Procedure.

[93] Single-person court that monitors respect for the constitutional guarantees of the parties.

[94] Article 1. Pretrial proceedings and single prosecution. No one may be convicted or punished nor subjected to one of the security measures established in this Code except by virtue of a substantiated sentence handed down by an impartial court. Everyone has the right to public oral pretrial proceedings conducted in accordance with the provisions of this Code. No one who has been convicted or acquitted or whose case has been dismissed pursuant to an enforceable judgment shall be subject to further criminal proceedings for the same act. Article 2. Natural judge. No one may be tried by special commissions, but only by a court indicated by law and established by law prior to the

96. As for whether military authorities can investigate and prosecute conducts constituting enforced disappearance, peacetime military legislation states in article 5 of the Code of Military Justice that military courts have jurisdiction to try: (a) cases involving military offences, meaning offences envisaged in the Code, with the exception of those arising from offences committed by civilians as provided for in articles 284 and 417 of the Code, which in all circumstances are tried by the ordinary courts, and cases that the military courts are required to try pursuant to special laws. They also try cases involving offences envisaged in the Aeronautic Code, in Decree-Law No. 2306 of 1978 on recruitment and mobilization and in Act No. 18.953 on mobilization, even if the accused are all civilians; (b) matters and cases provided for in subparagraphs 1 to 4 of the second paragraph of article 3; (c) cases involving ordinary offences committed by soldiers during a state of war, while on campaign, while performing or on the occasion of military duties, in barracks, camps, bivouacs, fortresses, military works, warehouses, offices, units, foundries, armouries, factories, parks, academies, schools, vessels, arsenals, lighthouses and other military or police premises or armed forces establishments or units; (d) civil actions brought for the offences listed in subparagraphs 1 to 3 in order to obtain restitution of property or payment of the value thereof.

97. Act No. 20.477 amending the jurisdiction of military courts was promulgated in 2010. Although article 1 of the Act excludes civilians and minors from military justice, it was interpreted to mean that civilians were excluded only if they were accused of an offence, not if they were victims, because if the accused in the latter case was a member of the armed forces the rule of competence laid down in article 5 of the Code of Military Justice must take precedence. The most important practical effect of this interpretation was that in cases of complaints of police violence committed by Carabineros against civilians, the military courts were understood to have jurisdiction, a situation that resulted in persistent impunity for police whose conduct was the subject of such complaints. In recent years, Constitutional Court and Supreme Court case law has permitted the exclusion from military jurisdiction of proceedings for ordinary offences committed against civilians by members of the Carabineros. The Constitutional Court upheld two pleas claiming that article 5 (3) of the Code of Military Justice could not be applied to such cases, thereby resolving the conflict of jurisdiction. Most judgments apply the standards established by the Inter-American Court of Human Rights to ensure that military courts have no jurisdiction over civilian parties to criminal proceedings and can only investigate and punish acts affecting the legal interests of the armed forces. The Constitutional Court therefore concluded that applying article 5 (3) to ordinary criminal proceedings infringed the rights to be heard by a competent judge in a public trial and to be tried by an independent and impartial court; these rights are accorded to both civilians and members of the armed forces under the Constitution and the international human rights treaties ratified by Chile.[95] The Supreme Court has likewise argued that the exclusion from military jurisdiction referred to in Act No. 20.477 refers not only to cases where the alleged perpetrators are civilians or minors, but also to cases where the victims are civilians or minors. This is because victims of crimes and human rights violations have access to more remedies in proceedings before the ordinary courts, especially the possibility of bringing criminal actions.[96]

98. Despite the trend in case law towards transferring cases involving civilians to the ordinary courts, the absence of an explicit law perpetuated uncertainty. To resolve this

perpetration of the act. Article 3. Exclusivity of the criminal investigation. The Public Prosecution Service exclusively shall conduct the investigation of the acts constituting the offence, which shall determine the accused person's guilt or innocence as prescribed by the Constitution and the law. Article 4. Presumption of innocence. No one shall be presumed guilty or treated as such until convicted by a final judgment.

[95] Constitutional Court, case of Enrique Eichin Zambrano, judgment No. 2493-13-INA of 6 May 2014, eighth and ninth preambular paragraphs; case of Marcos Antilef, judgment No. 2492-2013 of 17 June 2014, twenty-ninth, thirtieth and thirty-third preambular paragraphs.

[96] Supreme Court, case of Víctor Alejandro Basualto Pérez, No. 5884-2015, judgment of 4 June 2015; case of Jorge Aravena Navarrete, No. 12908-14, judgment of 12 August 2014; *Eichi Zambrano v. Carabineros*, No. 878-2015, judgment of 26 February 2015, first, second and third preambular paragraphs.

situation, article 1 of Act No. 20.477[97] was amended in the context of the passage of Act No. 20.968 criminalizing torture, with the new article establishing that a civilian must never appear in any capacity before military courts.

Article 12
Mechanisms for investigating the offence of enforced disappearance and guarantees of access to justice

99. Chile has fulfilled its obligation to investigate enforced disappearances that occurred under the dictatorship. The State agency responsible for doing so is the Human Rights Programme Unit in the Office of the Under-Secretary for Human Rights. Its mandate is contained in Act No. 19.123, which gives it express powers to institute judicial proceedings in order to investigate cases of enforced disappearance and extrajudicial execution recognized by the truth commissions.[98] Since the mid-1990s, there has been a policy of bringing court actions in all cases of disappearance, which, according to the official figures attached in annex II, involve a total of 1,101 victims: 73 women and 1,028 men.[99]

100. By 2016, the Unit had brought 582 proceedings involving 999 victims of enforced disappearance. Details of each victim, identifying the court, the case number and the stage reached in the proceedings, can be found in annex III. Efforts are being made to cover all cases of enforced disappearance, since there are 55 cases, listed in annex IV, to which the State is not a party.

101. Along with the Unit, the judiciary plays an important role in proceedings brought for disappearances that occurred under the dictatorship and has taken administrative measures, through the office of the national coordinator for cases of human rights violations,[100] to ensure the effective investigation and punishment of perpetrators. Using its self-regulatory powers, the full Supreme Court determines how investigating judges are to distribute cases and appoints a judge as national coordinator for cases of human rights violations committed during the dictatorship. Through its different public authorities, [101] the State has acknowledged that between 1973 and 1990, when the dictatorship was in power, there were no investigations into enforced disappearances and that the governments that came to power in the early years of the transition to democracy did not take the action that international standards demanded.

102. In 2010, the full Supreme Court agreed to issue Order No. 81-10 whereby proceedings for human rights violations occurring between 11 September 1973 and 10 March 1990 and involving the death or disappearance of persons would be tried and judged by a special appeal court investigating judge. This order was updated recently; [102] as

[97] New article 1 states that in no case shall civilians and minors who are victims of or accused of a crime be subject to the jurisdiction of the military courts. Jurisdiction in such cases shall always rest with the ordinary criminal courts.

[98] National Truth and Reconciliation Commission created by Supreme Decree No. 355 of 25 April 1990; National Reparation and Reconciliation Board created by Act No. 19.123 of 8 February 1992 to reconsider cases that had not resulted in a conviction previously and to enforce the measures proposed by the earlier commission; and National Commission on Political Prisoners and Torture created by Decree No. 1040 of the Ministry of the Interior of 26 September 2003.

[99] These also indicate the occupation of each victim, his or her age at the time of disappearance and the region of the country where the disappearance occurred.

[100] The current coordinator is Supreme Court investigating judge Sergio Muñoz Gajardo. Such coordination was ordered by the full Court on 13 May 2009.

[101] In 2013, the full Supreme Court acknowledged in a public statement that the fact that such violations actually occurred as they did was attributable partly to the failure of judges at the time to act and to do enough to determine whether such offences, which were an affront to any civilized society, were actually taking place, but attributable mainly to the Supreme Court of the time, which showed no leadership in prohibiting such activities, even though it must have been aware that they were taking place, given that they were reported to it through numerous applications filed in its sphere of competence. It had thus denied effective judicial protection to those who were entitled to it.

[102] Order of the full Supreme Court No. 739-2010 of 30 January 2017.

proceedings have progressed, cases have been allocated to a number of investigating judges in cities throughout the country.

103. As for the way in which the State has prosecuted the conducts defined in article 2 of the Convention, of all the sentences handed down by the Supreme Court in cases of human rights violations committed under the dictatorship, 176 were convictions for abduction, 16 for unlawful or arbitrary detention and 10 for enforced disappearance.[103] According to the judiciary's statistics, as of October 2015 a total of 1,422 persons had been tried, 744 had been charged and 399 had been convicted of serious human rights violations.

104. The procedural model governing investigations of human rights violations committed under the dictatorship is that established in the old Code of Criminal Procedure.[104] This procedure comprises an initial investigation or summary stage, followed by a plenary or evidentiary stage and culminating in a decision-making stage at the end of which a judgment is handed down.[105] Given their importance and the need to comply with international obligations, the Supreme Court ordered that such investigations should be carried out by appeal court judges. The practical effect of this policy could be seen when, in 2011, the Santiago Appeal Court judicial prosecutor filed over 700 applications concerning cases of enforced disappearance and extrajudicial execution that had never been investigated before.[106] By 2016, a total of 1,092 cases were in progress throughout the country and 178 final judgments had been handed down.[107] At present, 281 cases of enforced disappearance are in progress, involving 584 victims.

105. With regard to complainants' access to independent and impartial judicial authorities, Chile is a democratic republic[108] that fully respects the separation of powers and functions in its institutions. Together with the executive and legislative branches, the judiciary is one of the three pillars of Chile's democratic State, which is governed by the rule of law. It comprises courts with different areas of competence, namely, civil, criminal, labour and family courts, and its purpose is to afford people a justice that is both timely and of a high standard. The Human Rights Programme Unit is the State agency legally mandated to bring actions for the offences of disappearance and execution and represents the State's interests in complying with its obligation to prosecute serious human rights violations, while victims' relatives can see their interests represented directly in trial proceedings by their own lawyers.

106. A list of the judgments handed down in cases of enforced disappearance that occurred under the military dictatorship is attached in annex V and details the 150 convictions that have been enforced, involving 307 victims in cases for which proceedings were brought between 1995 and 2016.

107. At present, the Public Prosecution Service is the body responsible for bringing criminal proceedings in cases of enforced disappearance that occurred after the restoration of democracy. The Constitution and the law[109] assign it two important functions in the criminal justice system: firstly, directing the investigation and instituting public criminal proceedings for offences within its area of competence and, secondly, taking measures to protect victims and witnesses. The Service may take official action with respect to any offence that is liable to public prosecution, such as abduction, abduction of children or unlawful detention. This includes enforced disappearance, given the absence of a specific provision in Chilean law defining it as a separate offence.

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[103] As indicated in the information given in relation to article 2, domestic legislation does not criminalize enforced disappearance. However, the courts applied the definition contained in the Convention.

[104] Applicable to acts that occurred before the entry into force of the new Code of Criminal Procedure.

[105] This procedure is written, the investigation stage is secret and the role of the investigating judge, who investigates, tries and passes sentence in the case, is central.

[106] The Santiago Appeal Court judicial prosecutor, Beatriz Pedrals, filed 726 applications in cases concerning extrajudicial execution and enforced disappearance.

[107] According to the Supreme Court, 967 cases are at the summary stage, one has come to a standstill in the full Court and 124 others are being tried in the full Court.

[108] Constitution, article 4.

[109] Article 83 of the Constitution and article 1 of Act No. 19.640.

108. Reference must be made in this connection to the case of José Huenante Huenante,[110] which occurred in 2005 and was transferred from the ordinary courts to the military courts and back again. On 21 December 2009, the Public Prosecution Service presented charges against three members of the Carabineros. When this raised a question of jurisdiction,[111] the Puerto Montt appeal court declared the Puerto Varas military court competent to try the case and ordered the judge to transfer the dossier to that court, which dismissed the case some time later. However, based on an official military court communication of 4 October 2012,[112] the ordinary courts were again given jurisdiction to investigate offences of abduction of children, but only insofar as the responsibility of civilians was concerned.[113]

109. The case of the disappearance of José Vergara Espinoza,[114] which occurred in 2015, began with a complaint to the military courts. On 6 October 2015, the Public Prosecution Service opened the case in the Alto Hospicio local prosecution service of the Tarapacá regional prosecution service[115] and on 27 October a formal investigation was launched against four Carabineros from the Alto Hospicio third precinct for the offences of aggravated abduction and malicious use of a public instrument. The Prosecution Service ordered that the accused be placed in pretrial detention, a measure that is still in force.[116] When charges were entered, the question of jurisdiction was discussed and the Supreme Court finally ruled that the case came under the jurisdiction of the ordinary courts and ordered the military courts to transmit the dossier to the prosecution department of the Public Prosecution Service.

110. Hugo Arispe Carvajal,[117] whose work involved looking after cars, was arrested by Carabineros on 10 January 2001 for allegedly being drunk in the street. Since he had no money to pay the fine, he was taken to Acha prison in Arica, but four days later all trace of him was lost. The Public Prosecution Service is not investigating this case because the incident occurred before the new Code of Criminal Procedure came into force in the region. Instead, it is being investigated and tried by the third criminal court of Arica. The investigation is currently in progress and the National Human Rights Institute has lodged a criminal complaint.[118]

111. Although enforced disappearance has not yet been defined as an ordinary offence, the Public Prosecution Service has a specialized violent crime unit whose sphere of

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[110] José Huenante Huenante was 16 years old at the time of his disappearance. He was arrested in the early hours of 5 September 2005 by members of the Carabineros during a police operation carried out in a working class district of the city of Puerto Montt. He was taken to the Puerto Montt fifth police precinct and there has been no trace of him since.

[111] Conflict of jurisdiction invoked by one of the parties, who raised an interlocutory plea claiming that the court did not have jurisdiction to try the case.

[112] Official note No. 1030/2012 of the Puerto Varas military prosecutor's office communicating the decision of the Santiago military court that, since the information available appeared to point to the commission of an offence against the person of José Huenante Huenante attributable to civilians, as indicated by the order to investigate on pp. 431 ff., and pursuant to article 6 of the Code of Military Justice, the lower court must assemble the relevant evidence and transmit it to the Public Prosecution Service for the corresponding investigation.

[113] Proceedings currently in progress under RUC No. 1201032751-0 of the Puerto Montt local prosecution service and RIT No. 3288-2005 of the Puerto Montt district court.

[114] José Vergara Espinoza was 24 years old at the time of his disappearance. He had a 77-per-cent mental handicap, had been diagnosed as schizophrenic and was a drug abuser. He was arrested on 13 September 2015 by members of the Carabineros. The operation was carried out by First Corporal Carlos Valencia, Second Corporal Ángelo Muñoz and police officers Abraham Caro and Manuel Carvajal, who put him into a police car and allegedly took him for an identity check. He has not been heard of since.

[115] Proceeding currently in progress under RUC No. 1500956181-9 of the Alto Hospicio local prosecution service and RIT No. 11286-2015 of Iquique district court.

[116] According to official information from the Public Prosecution Service.

[117] Hugo Arispe Carvajal was arrested in the city of Arica by officers of the first Carabineros precinct for being drunk in the street. The first criminal court of Arica ordered his detention for four days in Arica prison where, while in the custody of the National Prison Service, all trace of him was lost.

[118] Roll No. 42095-04, with a criminal complaint lodged by the National Human Rights Institute on 7 November 2016.

competence includes the offences of abduction and child abduction and which is responsible for assisting the Attorney General.[119]

112. Victims or complainants have remedies for contesting a refusal by the competent authorities to investigate their case. The Public Prosecution Service has exclusive responsibility for criminal prosecutions and has the power to decide whether or not to launch an investigation. Article 168 of the new Code of Criminal Procedure governs cases in which the Public Prosecution Service may decide not to launch an investigation. As long as the judge has not intervened, the prosecutor may decide not to conduct an investigation when the acts do not constitute an offence or when the information and data supplied make it possible to establish that the investigation is complete. The prosecutor's decision must always be substantiated and must be submitted to the judge for approval. The provisional closure of cases[120] involving offences punishable by imprisonment is always subject to the approval of the regional prosecutor. The victim may request that the case be reopened and make application to the authorities of the Public Prosecution Service.[121]

113. The Public Prosecution Service is legally mandated to adopt measures of protection for complainants and witnesses. Act No. 19.640 set up a Victims and Witnesses Division in the Attorney General's Office and ordered the creation of a regional victims and witnesses unit in each regional prosecution service.[122] These units play a very important role in assisting and advising prosecutors in the implementation of protective measures. The Code of Criminal Procedure[123] establishes that the Public Prosecution Service has a specific duty to protect victims, including on its own initiative, from the beginning of the investigation to the end of the proceedings. Nevertheless, the Service is required to order, either itself or through the court, all necessary measures to prevent harassment, threats or attacks against victims.[124]

Article 13
Extradition for the offence of enforced disappearance

114. According to articles 351 ff. of the Convention on Private International Law,[125] the following conditions must be fulfilled before a request for extradition is granted:

- The act which gives rise to the extradition must be a criminal offence in the legislation of the requesting State and the requested State;
- The penalty for such acts must be not less than one year of deprivation of liberty;
- The offence must not be a political offence or an act related thereto; and
- The criminal prosecution or the penalty must not be already barred by limitation.

115. As already indicated, the offence of enforced disappearance is defined as a crime against humanity in article 6 of Act No. 20.357, which stipulates a penalty of a medium to maximum term of rigorous imprisonment (10 years and 1 day to 20 years). It therefore meets the condition of severity of the penalty established by extradition law.

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[119] Such assistance involves disseminating case law, providing training for prosecutors, coordinating investigative work with the police and proposing to the Attorney General changes to the law designed to improve the performance of the Public Prosecution Service in prosecuting violent crimes.

[120] Article 167 of the Code of Criminal Procedure.

[121] According to article 170 of the Code of Criminal Procedure, in cases where the Public Prosecution Service decides not to bring a criminal prosecution or to abandon it when the offence does not seriously threaten the public interest, the exceptions being offences where the minimum penalty is more than a minimum term of ordinary imprisonment or where the perpetrator is a public official. This article clearly does not apply to abduction or unlawful detention.

[122] Articles 20 (f) and 34 (e) of Act No. 19.640.

[123] Article 78 of the Code of Criminal Procedure.

[124] The Public Prosecution Service has a fund for this purpose, which is used for cases where certain services must be provided for victims.

[125] The Convention on Private International Law (also known as the Bustamante Code) is a treaty designed to establish common rules for the Americas on private international law. It has been ratified by 15 countries, including Chile.

116. To determine which authority is responsible for considering extradition requests, a distinction must be made between active and passive extradition. If it is passive, in other words, if Chile is the recipient of a request for extradition, the responsible authority is the Supreme Court and the request must be considered first by a member of the Court and then by a division of the Court. If it is active, in other words, if Chile requests extradition from another State, the Public Prosecution Service must make the request to the judge who is overseeing the proceedings, who must then refer the matter to the corresponding appeal court. If the legal requirements are met, the appeal court will accept the request and transmit its decision to the Ministry of Foreign Affairs, which is responsible for taking the necessary steps to comply with the decision.[126]

117. With regard to specific cases of requests for extradition considered by Chile's high courts in relation to enforced disappearances that occurred during the dictatorship, mention should be made of the case of Adriana Elcira Rivas González, whose extradition was requested from Australia (Supreme Court roll No. 8915-2013) for having carried out the aggravated abductions of Fernando Alfredo Navarro Allendes, Lincoyán Yalu Berríos Cataldo, Horacio Cepeda Marinkovic, Juan Fernando Ortiz Letelier, Héctor Véliz Ramírez and Reinalda del Carmen Pereira Plaza (annex VI). Mention should also be made of the request for the extradition of Armando Fernandez Larios from the United States of America for having carried out the aggravated abduction of David Silberman Gurovich, which was approved by the Supreme Court on 27 September 2006. At the time of completion of this report, the authorities of the requested countries had not handed over the persons concerned.

Articles 14 and 15
International cooperation

118. Requests for international assistance in connection with criminal proceedings are transmitted to the Ministry of Foreign Affairs through the diplomatic channel or received directly from the central authority of the requesting State. They are then referred to the Public Prosecution Service for processing. Chile has signed a number of treaties on judicial cooperation, some of which are applicable to the offence of enforced disappearance. The bilateral treaties applicable in this regard are:

- Treaty on judicial assistance in criminal matters with Italy (signed in Rome in 2002);
- Agreement on equal treatment in procedural matters and letters rogatory with Uruguay (signed in Montevideo in 1981);
- Agreement on exchange of information in criminal matters with Uruguay (also signed in Montevideo in 1981).

Chile has signed the following multilateral treaties:

- Convention on Private International Law, in particular title V of book IV on letters requisitorial or letters rogatory;
- Inter-American Convention on the Taking of Evidence Abroad (adopted in Panama on 30 January 1975);
- Inter-American Convention on Mutual Assistance in Criminal Matters (signed in the Bahamas in 1992) and its optional protocol (signed in Nicaragua in 1993);
- Agreement on Mutual Legal Assistance in Criminal Matters between the States parties to MERCOSUR, Bolivia and Chile (adopted in Buenos Aires in 2002);

[126] Chile has signed bilateral extradition treaties with 10 countries that have in turn ratified the Convention: Belgium, Bolivia (Plurinational State of), Brazil, Colombia, Ecuador, Mexico, Paraguay, Spain, Uruguay and Venezuela (Bolivarian Republic of). It has also signed multilateral extradition treaties such as the Agreement on extradition among the States parties to MERCOSUR, Bolivia and Chile (signed in 1998), the Montevideo Convention on the Rights and Duties of States (signed in 1933) and the Convention on Private International Law (adopted in Havana in 1928). No new international treaties on extradition have been signed since Chile ratified the Convention.

- European Convention on Mutual Assistance in Criminal Matters (signed in Strasbourg in 1959) and its two additional protocols (signed in 1978 and 2001).

119. Following the Working Group's visit in 2012, Chile signed memorandums of understanding on the exchange of documentation for the investigation of serious human rights violations[127] with Argentina (13 May 2014), Brazil (12 June 2014) and Uruguay (12 September 2014) (see annex VII).

120. Chile is a party to the memorandum of understanding on the exchange of documentation for the investigation of serious human rights violations to which all MERCOSUR countries are parties. The purpose of the memorandum, drawn up in the framework of the meetings of high-level human rights authorities of MERCOSUR, is to create a multilateral mechanism permitting the exchange of information and documents for the investigation of serious human rights violations committed by the dictatorships that governed countries of the region in the recent past. Such a mechanism will enable progress to be made in judicial investigations and in efforts to determine the fate of victims of enforced disappearance.

Article 16
Principle of non-refoulement

121. As of now, there are no records of the expulsion, return (refoulement) or extradition of a person to a State where there are substantial grounds for believing that he or she would be in danger of being subjected to enforced disappearance. The Ministry of Foreign Affairs has not made any arrangements for subsequent monitoring of such cases, since such monitoring is the responsibility either of the judicial authority that requested the person's removal or of the appropriate judicial authority of the requested State. There have been no recent cases of requests for passive extradition in which Chile, as the requested State, has requested and accepted diplomatic guarantees or assurances.

Article 17
Prohibition of arbitrary detention

122. Article 19 (6) (c) of the Constitution stipulates that no one may be detained except on the order of a public official expressly authorized by law and only after the order has been legally served. A person caught in flagrante delicto may, however, be detained for the sole purpose of bringing him or her before the competent judge within the following 24 hours. Courts are the only bodies authorized to order deprivation of liberty and then only so that a person can be brought before the competent authority as established in article 125 of the Code of Criminal Procedure.

123. Accordingly, the Constitution establishes a mandatory time limit for bringing detainees before a competent judge so that the judge can monitor their detention. The specific rules governing deprivation of liberty are contained in the Code of Criminal Procedure, which stipulates time limits for detention, making a distinction between detention pursuant to a court order, in which the accused must be brought before the judge immediately or, where this is not possible, within the following 24 hours, and detention of a person caught in flagrante delicto, in which the Public Prosecution Service must be notified within 12 hours and the person must be brought before a judge within a maximum of 24 hours in order to determine the legality of the detention.

124. Article 10 of the Code of Criminal Procedure also regulates an action called precautionary safeguards, whereby the judge may, at any stage of the proceedings, if he or she believes that the accused is unable to exercise the rights granted by the judicial safeguards set out in the Constitution, domestic law or the applicable international treaties ratified by Chile, take ex officio or at the request of a party the necessary measures to

[127] To promote and foster cooperation among countries maintaining archives on the serious human rights violations that occurred under the military dictatorships of States of the region.

permit the exercise of those rights. If these measures are insufficient to prevent the accused person's rights from being seriously affected, the judge must order the proceedings suspended and summon those involved to a hearing to be held with those present.

125. Article 135 of the Code of Criminal Procedure states that the public official in charge of the detention has a duty to inform the detainee of the reason for his or her detention and of his or her rights. In particular, article 93 (b) of the Code establishes the right to be assisted by legal counsel from the beginning of the investigation and article 94 (h) establishes the right to receive visits and to communicate in writing or by any other means.[128]

126. Article 253 of the old Code of Criminal Procedure, which governs cases arising from events that occurred before the adoption of the new Code,[129] establishes that no one may be detained except on the order of a public official expressly authorized by law or in cases of flagrante delicto, in which case the detention shall be for the sole purpose of bringing the person before the competent judge. Article 269 establishes that detainees must be brought before the judge immediately or, if the person was detained outside the court's hours of operation, the following morning. Lastly, article 270 sets the maximum time limits for bringing a person before a judge at 24 hours for cases of flagrante delicto and 48 hours for other offences. With regard to guarantees for victims and witnesses, article 7 states that the judge may order that victims be given priority in the relevant public services and that they and witnesses be given police protection, if this is deemed necessary, as part of the preliminary investigation.

127. Act No. 18.314 defining terrorist conducts and establishing the corresponding penalties accords a special status to the investigation of terrorist offences: article 11 authorizes judges to extend by up to 10 days, by means of a substantiated decision and at the prosecutor's request, the time limits for bringing a detainee before the judge.

128. For information on the conditions under which foreign nationals may communicate with the consular authorities of their country, see the information given in relation to article 10.

129. With regard to the existence of mechanisms for inspecting prisons or other places of deprivation of liberty, there are at least two institutions that have express legal powers to do so: the judiciary and the National Human Rights Institute. The judiciary has broad powers whereby judges may visit and inspect prisons under the precautionary safeguards procedure established by the new Code of Criminal Procedure[130] and appeal court or Supreme Court investigating judges may do so in exercise of their power to visit prisons in person in the context of a writ of habeas corpus. The National Human Rights Institute, for its part, is specifically authorized under article 4 of Act No. 20.405[131] to make preventive random visits to public prisons. It should be added that the Act allows the Institute to impose confidentiality in respect of testimonies, information and documents compiled and prepared in the course of its human rights promotion and protection activities. The Institute also asked the Comptroller General's Office to rule on the lawfulness of entering any spatially limited place operated by public officials where deprivation of liberty might occur, including police vans. On 21 September 2012, the Office issued ruling No. 058070 stating that such access was lawful as long as there was due communication with the corresponding police authority. By official note No. 516 of 17 December 2014, the

[128] Save for legal exceptions, which may be established only in cases duly defined and authorized by a court.

[129] The application of the old Code of Criminal Procedure to detention is valid only for existing cases and only on the order of the judge who is trying the case. The old Code does not apply to cases of flagrante delicto or other contingent situations, which are governed by the new Code.

[130] Articles 10 and 95 of the new Code respectively.

[131] Article 4. In order to exercise its authority, the Institute may request the cooperation of the different State organs. It may also receive any testimony and obtain any information and documents needed to examine situations within its sphere of competence. It may likewise commission one or more advisers, the Director or the staff to enter public prisons where a person is or may be imprisoned.

National Director of the Prison Service also issued a ruling on supervision and cooperation in respect of visits made by the Institute's staff to persons detained in prison.[132]

130. To be able to inspect places of detention, any person or institution other than the Prison Service must request authorization from either the National Director's Office or the corresponding regional director's office, both of which have the power to give private individuals, public officials or national or international private entities access to prisons.[133]

131. Lastly, on 30 May of this year, the Government presented to the National Congress a bill designating the National Human Rights Institute as the national machinery for the prevention of torture and other cruel, inhuman or degrading treatment or punishment (BOL No. 11245-17). The bill, which is currently undergoing an initial constitutional hearing, states that in carrying out its mandate the Institute shall act solely through a committee for the prevention of torture, which shall be governed by the principles of independence of its staff, functional autonomy and confidentiality with respect to its activities and to information obtained in exercise of its functions. The bill notes that such committee shall comprise a minimum of nine experts appointed by the board of the Institute according to the selection process for senior public servants. Its functions shall include periodically reviewing the treatment received by persons deprived of their liberty and making recommendations to the authorities, for which purpose it shall enjoy the following powers, among others: access to places of detention, the power to demand information and the possibility of meeting detainees and maintaining cooperative relations with the Committee against Torture and the Subcommittee on Prevention of Torture. Aside from its main function, which is to visit prisons, the proposed committee is assigned other tasks: proposing legal or regulatory amendments related to torture; producing an annual public report that describes the work done and makes specific recommendations aimed at preventing and eradicating torture and other cruel, inhuman or degrading treatment or punishment; and promoting and undertaking training, information and public awareness activities. To ensure that the committee is able to do its job, the bill establishes measures such as prohibiting any authority or official from preventing prison visits or taking or permitting reprisals against the committee or those who talk to it. The committee's members are also exempted from the obligation to report crimes or offences that come to their knowledge (annex VIII).

132. While the Public Criminal Defence Service does not have the power to inspect prisons or other places of detention, it has prison defenders throughout the country who can enter prisons and verify the situation of detainees, by virtue of the powers granted to all lawyers, and can take administrative and/or judicial measures to address any irregularities.

133. With regard to the right of persons deprived of liberty to communicate with their family, lawyer or any other person, under the prison regulations (articles 39 ff. of Decree No. 518 of 1998 of the Ministry of Justice and Human Rights), detainees have the right to communicate personally, by telephone, with their relatives or a person of their choice to inform them that they have been admitted to prison. If the court has ruled that the detainee must be held incommunicado, this information must be transmitted, either by social workers or by the staff responsible for admitting the detainee, within a maximum of 24 hours from when the detainee entered the prison.[134]

134. Lawyers' visits are subject to the rules governing prison visits by lawyers and other authorized persons[135] and the principle whereby persons deprived of liberty shall be afforded every facility to secure the assistance of legal counsel not only on criminal matters

[132] In its capacity as an oversight body, the Institute published the *Estudio de la Condiciones Carcelarias en Chile: Diagnóstico del Cumplimiento de los Estándares Internacionales de Derechos Humanos* (Study of prison conditions in Chile: analysis of compliance with international human rights standards) in 2014.

[133] In practice, such authorization is given by means of national or regional decisions and official communications.

[134] Visits by relatives and other persons are regulated by article 49 of the prison regulations, which establish that detainees are entitled to at least one weekly visit of two hours or more.

[135] Decree No. 643 of 2000 of the Ministry of Justice and Human Rights.

but also on any other legal business or judicial procedure requiring the assistance of a lawyer.

135. Particular mention should be made of the detention and imprisonment of minors. Chile has special rules on adolescent criminal responsibility, which are contained mainly in Act No. 20.084 establishing a system of adolescent criminal responsibility for breaches of criminal law, in force since 8 June 2007, and its implementing regulations (Supreme Decree No. 1378 of 2007 of the Ministry of Justice and Human Rights). The rules are applicable to persons who were aged 14 to 17 years when they committed the offence in question. This system incorporates some changes and additions to the conditions of detention described above, in accordance with the general principle of the best interests of the adolescent established in article 2 of the Act.

136. With regard to the detention of adolescents in cases of flagrante delicto, article 31 of the Act establishes that police officers must bring the adolescent before the judge as soon as possible and within a maximum of 24 hours. The judicial hearing of an adolescent must be given priority and an adolescent may give a statement to the prosecutor only in the presence of a defence lawyer, whose participation is essential in any action that is taken.

137. With respect to the authorities competent to order deprivation of liberty, article 34 of the implementing regulations establishes that it is only pursuant to a decision of a competent court that an adolescent may be admitted to a centre or programme that enforces a measure or penalty. Article 29 of the Act establishes the requirement that the judges, prosecutors and defenders involved in a case must have received specialized training in criminological research and information related to adolescent crime, in the provisions of the Convention on the Rights of the Child, in the special characteristics of adolescence and in the system for the enforcement of penalties established in the Act.

138. Concerning places of deprivation of liberty, the Act establishes the principle that adolescents must always be detained separately from adults. This applies both to police detention and to deprivation of liberty as a result of a conviction. Article 31 of the Act states that pretrial detention, where ordered by the judge, must take place in a centre administered directly by the National Service for Minors (SENAME) and not in the same places as those used for holding adults in pretrial detention. A distinction must also be made between the closed and semi-closed systems for serving a sentence, which are two different systems.[136]

139. The rights of detained adolescents are set out in article 49 of the Act. For instance, paragraph (e) (iv) establishes that they must be able to communicate regularly and privately, especially with their lawyers. One of the main features of adolescent criminal law is that there can be no exceptions to this right. The same paragraph establishes the right to legal assistance. Article 11 of the implementing regulations goes further, placing special emphasis on the right to maintain private, ongoing communication with a lawyer. The conditions governing the exercise of this right are set out in articles 76, 77 and 78 of the implementing regulations. In the case of foreign nationals, article 15 of the regulations establishes that the consular authorities of the adolescent's country must be notified of his or her admission to the corresponding centre if he or she is habitually resident outside Chile or if a party so requests.

140. With regard to the entry of competent authorities to the detention centres established by Act No. 20.084, articles 90 ff. of the implementing regulations provide for an inter-institutional supervisory commission to visit such centres at least twice a year to inspect conditions and make recommendations in a report to the Ministry of Justice aimed at safeguarding respect for the rights of adolescent detainees. The commission is made up of the authorities of State institutions and social organizations, as well as representatives of the judiciary, the Public Prosecution Service and the United Nations Children's Fund.

[136] Under article 43 of the Act, in the closed system, sentences must be served in closed detention centres administered directly by SENAME. In the semi-closed system, sentences may be served either in centres that are administered directly by SENAME or in centres that work with it. Both closed centres and pretrial detention centres have outside guards provided by the Prison Service.

141. The National Prison Service has its own computerized system for the registration of persons deprived of liberty. The most comprehensive record is the standard record of prisoners serving a sentence, which contains information under the following headings:

- Identity of the person deprived of liberty, listing personal data, criminal involvement, prison where he or she is detained, date of admission and reason for imprisonment;
- Classification, giving data on the prisoner's location in the prison;
- Judicial information, including the dates on which the sentence began to be served and when it will end;
- Parole, if there is any relevant information;
- Associated case(s) and offence(s), indicating all the criminal cases in which the prisoner has been involved, including the lower and higher courts that tried them and the date on which the sentence became enforceable;
- Family situation, giving additional personal information and the names of some relatives;
- Distinguishing features, describing any physical characteristics that make it possible to recognize the prisoner;
- Health information.

A copy of the standard record is attached to this report in annex IX. The records kept by the National Prison Service thus meet most of the conditions set out in article 17 (3) of the Convention, particularly those in subparagraphs (c), (d), (e), (f) and (h).

Article 18
Access to information

142. The Public Prosecution Service is responsible for providing information on the proceedings, on request, to parties involved in criminal cases.[137] Article 93 (a) of the Code of Criminal Procedure states that the accused must be informed specifically and clearly of the acts of which he or she is accused and the rights granted to him or her by the Constitution and laws. Chile has laws[138] punishing State agents who, having in their custody persons deprived of liberty, infringe rights related to the information that a lawyer or interested third parties may request.

143. Article 150 (1) and (2) of the Criminal Code imposes a medium term of ordinary imprisonment and associated penalties on anyone who holds a person deprived of liberty incommunicado or treats that person with undue severity, as well as on anyone who has a person arrested or detained arbitrarily in places other than those established by law. The final paragraph of the article also allows for the possibility of punishing persons who, while not public officials, were involved in such conduct.

144. The Public Prosecution Service has the constitutional and legal obligation to take all necessary measures for the protection of victims and witnesses during the trial. Article 17 (a) of Act No. 19.640 states that the Attorney General shall have the power to give general instructions for the due performance of protection tasks, for which purpose the Act created

[137] Article 12 of the Code of Criminal Procedure identifies such parties as: the prosecutor, the accused, the defence counsel, the victim and the complainant.

[138] Article 149 (3) and (4) of the Criminal Code imposes a penalty of a minimum to medium term of ordinary imprisonment on anyone who prevents detainees from communicating with the judge hearing their case and convicted persons from communicating with the judges responsible for visiting prisons, and on prison authorities who refuse to transmit a copy of the detention order to the court, at the prisoner's request, or to demand that such copy be provided or to themselves issue a certificate attesting that the individual has been imprisoned.

a Victims and Witnesses Division in the Attorney General's Office and provided for the creation of regional victims and witnesses units throughout the country.[139]

145. In the Public Prosecution Service, there are no administrative restrictions on access to the information contained in the investigation files of a criminal trial, other than the restriction imposed by article 82 of the Code of Criminal Procedure.[140] There are thus no restrictions on access by a relative of a person deprived of liberty who is recognized as an indirect victim or by the victim's representative or lawyer to information obtained in the course of the investigation.

146. In cases of enforced disappearance that occurred in the period from 1973 to 1990 and are being tried by judges appointed exclusively for that purpose, there is active cooperation among judges, victims' relatives and the Human Rights Programme Unit. Since the Unit brings criminal proceedings centrally in cases of enforced disappearance, it has a wealth of judicial and historical information and makes such information available on request to relatives and the judiciary. The investigating judges trying these cases hold daily meetings with victims and relatives to brief them on the progress of investigations and trials. With regard to the progress made by the State in providing access to information, mention should be made of the bill amending Act No. 19.992 that would give the courts access to the information, documents and testimonies compiled by the Valech I Commission, which under current law must remain confidential for 50 years. The bill, which is being sponsored by the executive branch as a legislative priority, is currently undergoing a second constitutional hearing, having been approved by the Senate Human Rights Committee (annex X, BOL No. 10.883-17).

147. Also with respect to access to information, a bill was introduced on 20 March 2015 that would amend Decree-Law No. 5200 of 10 December 1929 of the Ministry of Public Education with a view to prohibiting the destruction of archives and information by the Ministry of Defence, the armed forces, public security forces and law enforcement agencies (BOL No. 9958-17). The bill is aimed at the repeal of Act No. 18.771, promulgated in 1989 under the military dictatorship, which gave the Ministry of Defence, the armed forces, the security forces and law enforcement agencies the power to archive and destroy documentation belonging to them. The bill argues that under the current law on ministerial documentation and archives (Decree-Law No. 5200), ministerial documentation and archives that are over five years old must be filed in the national archive. Act No. 18.771 amended Decree-Law No. 5200 by establishing exceptions that enabled the Ministry of Defence and the armed forces to destroy documentation without having to obtain prior authorization from the keeper of the national archive, the President of the Republic or any other State authority or body.

148. Lastly, different State bodies have cooperated actively in gathering information that might help shed light on the human rights violations being investigated by the courts. For instance, on 18 October 2016 the Ministry of Justice and Human Rights sent investigating judge Mario Carroza the files on court martial sentences found on its premises.

Article 19
Obtaining genetic data and medical information

149. The Forensic Medical Service, which operates under the Ministry of Justice and Human Rights, has worked specifically on establishing the identity of victims of enforced disappearance and the possible causes of death. A Special Forensic Identification Unit was set up to assist the justice system in the investigation of human rights violations. One

[139] Articles 20 (f) and 34 (e) of Act No. 19.640 organizing the Public Prosecution Service. To enforce this obligation, the Prosecution Service adopted a victims and witnesses protocol stipulating specific actions for the provision of counselling, protection and support in order to provide standardized, quality care nationwide. Initial risk assessments are made, which are then used to design the protection and/or other services to be provided to the victim or witness.

[140] The Public Prosecution Service prosecutor may, on an exceptional basis and for a set period of time, order that certain actions and documents not be disclosed to persons involved in the proceedings.

example of the Unit's work is the Patio 29 inter-institutional forum[141] made up of the Human Rights Programme Unit, two judges specially appointed to investigate crimes committed by the dictatorship, the Human Rights Unit of the Civil Registry and Identity Service and the Human Rights Brigade of the Investigative Police. The forum has been meeting for a year now and has permitted efficient coordination among the institutions concerned.[142]

150. The Special Forensic Identification Unit is working with two genetic databases: the DNA reference samples database and the bone samples database. The first of these consists of DNA extracted from blood samples and bone/tooth samples taken from relatives of victims of human rights violations, living or dead. The blood samples were collected either voluntarily or pursuant to a court order. Between 2007 and the present, a total of 3,697 samples and 83 posthumous samples have been taken. The bone samples database uses samples collected by extracting DNA from bone remains presumed to belong to victims of human rights violations. Between 2007 and the present, a total of 1,619 bone samples have been taken. The Unit's procedures are regulated by protocols drawn up on the recommendations of a panel of international experts, which in 2007 established the standards that the State must follow in identifying victims of enforced disappearance. There are three such identification protocols.[143]

151. Victims' medical information is obtained in the course of an interview with relatives, using the questionnaire for collecting ante-mortem data on missing persons,[144] which records information on the interviewee and the victim, such as family history, personal information, circumstances of the disappearance, physical description, photographs, habits, medical history, and clothing and personal items at the time of disappearance. Between 2007 and the present, 333 interviews with relatives have been conducted using the questionnaire.

152. The genetic information obtained by the Unit is processed by laboratories and makes it possible to confirm or reject a victim's identification. The medical information obtained through interviews supplements the results obtained by laboratories for determining the manner and cause of death.

153. Act No. 19.970 created and, along with its implementing regulations, regulates the National System of DNA Records, constituted on the basic of genetic fingerprints obtained in criminal investigations.[145] The information obtained is confidential and may be consulted directly only by the Public Prosecution Service and the courts.[146] The Act stipulates that in no circumstances may the System be used to discriminate against or stigmatize a person or to infringe his or her dignity, privacy or honour. As provided in Act No. 19.628 on protection of privacy, the information it contains, in particular biological samples and genetic fingerprints, is treated as sensitive data of the persons to whom it belongs. Anyone who gives unauthorized persons access to records or examinations or discloses or uses their contents unlawfully is liable to criminal prosecution.[147]

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[141] Patio 29 is an area of Santiago general cemetery, declared a national monument in 2006, which was used between 1973 and 1990 to bury the bodies of executed political prisoners in unmarked graves. Starting in 1991, the authorities carried out exhumations of human remains and began investigations to identify them.

[142] In 2006, the then Government acknowledged that mistakes had been made in identifying the remains of disappeared prisoners found in Patio 29. In 2007, the Forensic Medical Service overhauled the investigation procedure for outstanding efforts to identify remains and/or causes of death. An advisory commission was formed with a panel of international experts, which made various recommendations.

[143] Protocol for taking bone and tooth samples for DNA analysis; protocol for taking blood samples in Chile; and protocol for taking blood samples abroad.

[144] International Committee of the Red Cross questionnaire, version 1.0.

[145] Article 9 of Act No. 19.970 stipulates that records of disappeared persons and their relatives must contain the genetic fingerprints of relatives of the disappeared or missing person who agree voluntarily to donate a biological sample that may be useful for identifying that person.

[146] Article 19 (1) of Act No. 19.970.

[147] Article 11 of Act No. 19.970.

154. The following procedures apply with regard to the safekeeping of post-mortem blood, bone and/or tooth samples and those extracted from the bone remains of victims of human rights violations. Blood samples are taken in drops and put onto FTA cards. The Forensic Medical Service keeps two samples and, since 2015, the practice has been to place other samples in the safekeeping of the International Committee of the Red Cross in Geneva. Meanwhile, genetic profiles are stored in a special repository. Bone and tooth samples are stored in the same repository as blood samples. The repository is administered by a company that signs a contract with the Forensic Medical Service adhering to high standards of confidentiality. Only the forensic team and the foreign genetic experts who confirm the findings and are part of the chain of professionals involved in the identification of victims' remains have access to the samples.

155. The Forensic Medical Service has identified 291 victims of enforced disappearance and extrajudicial execution, of whom 153 were identified by DNA analysis (nuclear DNA)[148] and 123 by traditional analytical methods (forensic anthropology, fingerprint analysis or forensic odontology). Lastly, 15 victims were identified by mitochondrial DNA analysis. Annex XI contains tables detailing the place where each victim was found, the victim's nationality and the region.

Article 20
Restriction of the right to information

156. With regard to restrictions on access to information, it should be noted that the new Code of Criminal Procedure is based on the principle that accused persons are entitled to be brought before a judge and to be tried in public oral proceedings.[149] Only in exceptional cases are restrictions imposed on access to information on legal proceedings. For instance, article 182 of the Code establishes the general rule that information on Public Prosecution Service and police investigations shall not be disclosed to persons who are not involved in the proceedings. The accused and other parties involved in the proceedings may examine and obtain copies of records and documents relating to the investigation. As an exceptional measure, the prosecutor in charge of the investigation may order that certain actions, records or documents not be disclosed to the accused when this is deemed necessary for the effectiveness of the investigation.[150] The accused or any other person involved in the proceedings may request the due process judge to end such non-disclosure or to limit its duration or the documents or persons it covers. The prosecutor may not impose confidentiality in respect of the accused person's statement or any other procedural action in which the accused is involved or is entitled to be involved, actions in which the court is involved or reports submitted by experts concerning the accused or his or her defence counsel. These conditions conform to the standard set out in article 20 of the Convention, in that the Public Prosecution Service may impose confidentiality in respect of certain elements of the investigation only on an exceptional basis and never permanently, the accused person's defence counsel may apply to the judge to reverse this administrative decision and, lastly, confidentiality may never be imposed in respect of documents relating to elements of the investigation in which the accused was involved.

Article 21
Legality of release

157. Article 1 of the Constitution states that everyone is born free and equal in dignity and rights. Although it was stated earlier that restrictions may be imposed on this right in states of emergency, the rules governing states of emergency limit the application of such restrictions. The Code of Criminal Procedure sets out the rules whereby the different bodies

[148] Everyone identified by this method was identified from 2010 onward.

[149] The principle that proceedings must be public is set out in general terms in articles 1 and 2 of the Code of Criminal Procedure and specifically in article 320 of the Code.

[150] Non-disclosure may not last for more than 40 days, save where this period is extended with reasonable cause.

involved in a person's deprivation of liberty must guarantee at all times that there is an official record of his or her release and take the necessary measures to ensure the person's physical integrity and full exercise of his or her rights.[151] In enforcing the precautionary measure of pretrial detention, both the courts and the Prison Service are responsible for overseeing and supervising the release of accused persons.

158. When custody of a convicted prisoner ends, the Prison Service issues a release order identifying the prisoner and giving the relevant exit information, including the responsible authorities, the reasons for release (completed sentence, reduced sentence, parole) and the details of the case for which the prisoner was serving a sentence, and issues a certificate stating that the sentence has been served.

159. The Public Criminal Defence Service[152] has a computerized criminal defence management system (SIGDP) that keeps a record of everyone who is in pretrial detention and is being defended by a public criminal defender. The system also has online records of users of the prison defence service who are serving prison terms.[153]

Article 22
Right to file remedies and obtain information

160. Article 21 of the Constitution establishes the remedy of *amparo*, which is comparable to habeas corpus. This constitutional remedy allows anyone who has been arrested, detained or imprisoned, or anyone acting on his or her behalf, to appear before the corresponding appeal court and have it order that the legal formalities be observed and that the necessary measures be taken immediately to restore the rule of law and ensure due protection of the person concerned. The court may order those detaining the person to bring him or her before it. The purpose of this remedy is to secure an order for the person's immediate release, correct legal failings or have the person brought before the competent judge by means of a brief, summary procedure. The same remedy may be filed for anyone who is illegally exposed to any other form of deprivation, disturbance or threat to his or her right to liberty and security of person.

161. Article 95 of the Code of Criminal Procedure establishes the remedy of *amparo de garantías*, which is filed with the due process judge and enables anyone deprived of liberty to exercise his or her right to be brought before the judge without delay in order to have the lawfulness of the deprivation of liberty and his or her condition examined. The person

[151] Article 150 of the Code of Criminal Procedure: "Enforcement of pretrial detention. The court shall be competent to supervise the enforcement of an order of pretrial detention issued by it in a case that it is hearing. It shall hear applications and submissions made on the occasion of such enforcement. Pretrial detention shall take place in special establishments different from those used for convicted prisoners or, at a minimum, in places completely separate from those used for convicted prisoners. The accused shall at all times be treated as innocent. Pretrial detention shall be such that it does not take on the characteristics of a penalty or give rise to restrictions other than those necessary to prevent escape and guarantee the safety of other detainees and persons on duty or otherwise present in the detention centre. The court shall adopt and order the necessary measures for protecting the accused person's physical integrity, especially those designed to keep juveniles and first offenders separate from more dangerous prisoners. In exceptional cases, the court may give the accused permission to leave the detention centre for good reason and for the time strictly necessary to fulfil the purposes of such leave, provided that it duly ensures that the aims of the pretrial detention will not be jeopardized. Any restriction imposed on the accused by the prison authority must be communicated immediately to the court, together with the reasons for it. The court may lift the restriction if it considers it to be illegal or abusive and may, if it deems necessary, convene a hearing to consider the measure.

[152] Institution under the authority of the Ministry of Justice and responsible for the public criminal defence of any person accused of committing an offence who does not have his or her own lawyer.

[153] According to the *Report on the Use of Pretrial Detention in the Americas*, published by the Inter-American Court of Human Rights in 2013, 20.4 per cent of people deprived of their liberty in Chile are pretrial detainees. This is the second lowest figure among the 16 countries of the subcontinent that provided data, higher only than Nicaragua (12.3 per cent) and far lower than Bolivia (84 per cent) or Paraguay (73.1 per cent). Figures provided by the National Prison Service to the Senate in October 2016 showed that this figure had increased to 32.8 per cent, but even so Chile still has one of the lowest rates of pretrial detention in the Americas.

concerned, his or her lawyer or family members or any other person acting on his or her behalf may make the application to the judge hearing the case or the judge of the place where the person is located. The judge may order the person's release or take appropriate measures.

162. With regard to the laws punishing unlawful deprivation of liberty, the Criminal Code establishes the offences of unlawful arrest (article 143), arbitrary or unlawful arrest or detention (article 148), offences involving restriction of the rights of persons deprived of liberty (article 149) and offences involving incommunicado and secret detention (article 140), on which information was provided in relation to articles 2 and 4.

Article 23
Action of officials and persons involved in the investigation and punishment of the offence of enforced disappearance

163. There are no specific education programmes on the prevention of enforced disappearances in the civil and military institutions responsible for law enforcement in Chile. Nevertheless, general human rights education programmes have been implemented to bring police training into line with the Convention.

164. The Chilean Carabineros have begun a process of mainstreaming human rights in the various spheres of police activity by including human rights modules in their education and training programme.

165. In November 2011, the Carabineros created a Human Rights Department to promote implementation of the human rights standards applicable to policing set out in Chilean and international law. In 2013, a new human rights module was incorporated into education, training and advanced training programmes, covering such topics as international standards on the use of force, obligations to persons deprived of liberty, prohibition of torture and protection of vulnerable groups. In addition to police officers who graduated between 2013 and the present, the following have received human rights training: 184 outreach instructors, 11,000 operational staff between January and December 2016 and 9,000 operational staff between January and August 2017.

166. The Investigative Police have extensive experience in human rights education. Since 1992, staff members have attended regular human rights courses and programmes. These were improved and modernized in 2010, with the cooperation of the Inter-American Institute of Human Rights. Programmes are taught at all levels of education. In the specific case of the Investigative Police Academy, the three years of training include ethics and human rights modules, both theoretical and practical. For instance, students who enrolled in the detective training programme in 2015 and will graduate in 2018 will study ethics, human rights and public safety over three semesters. Each year, these courses are taught to around 250 future members of the Investigative Police. Investigative Police officers at commissioner[154] level attending the Higher Academy of Police Studies follow a human rights course for a semester. This course is taught to around 80 future commissioners annually.[155] The Investigative Police have two important documents, a code of professional ethics, updated in 2008, and a module and supplementary methodological guide on human rights, public safety and police functions drawn up jointly with the Inter-American Institute of Human Rights. In the area of specialized training, the Investigative Police education service has designed two versions of an international diploma on human rights and public safety in policing, one taught online and the other in person, both of which are based on solving hypothetical cases and simulating real situations. The Investigative Police have also signed cooperation agreements in the academic, curricular and training spheres with the National Human Rights Institute and the Public Criminal Defence Service.

[154] To be promoted to police commissioner, they must have completed 20 years' service in the Investigative Police.

[155] Since 2017, the Investigative Police have taught a specialized police training course in human rights to serving members of the force.

167. In June 2012, the National Prison Service created a Human Rights Protection and Promotion Unit, under the authority of its National Director, to advise on the planning and development of policies and plans concerning respect for and the promotion and protection of human rights and on the application of international human rights instruments. The Unit has expanded its coverage nationally by opening regional units, permitting the delivery of training and ongoing awareness-raising activities to Prison Service staff. Such activities include: (i) incorporation in the syllabus of the Prison Service Academy of a module on human rights and international standards that includes the topic of torture and ill-treatment; (ii) an annual diploma course on human rights with Diego Portales University aimed at prison officers and professionals directly involved with the prison population; (iii) specialized human rights seminars on such topics as the rights of persons deprived of liberty and gender violence; and (iv) the production of pamphlets on rights and obligations translated into English, Mapudungun, Aymara and Rapanui. By the end of 2015, the Unit had trained 1,539 officers from different prisons throughout the country. It has also set up a monitoring section to consider complaints and lawsuits concerning the infringement of rights, which are then referred to the relevant bodies for resolution.

168. The Office of the Under-Secretary for Human Rights has a specific mandate in the area of human rights education. Act No. 20.885 refers to both training and education in human rights and places special emphasis on human rights training for public servants, particularly members of the armed forces, the police, the security forces and the Prison Service.

169. In 2016, the Ministry of Defence adopted its own human rights policy by ministerial order. In line with this policy and the task of coordinating sectoral policies for national defence personnel, including education policy, the Office of the Under-Secretary for the Armed Forces is responsible for proposing the basic human rights contents to be included in military institutions' syllabuses and training programmes. The first proposal was made in 2016 and will have to be analysed by the armed forces prior to its incorporation in the syllabus of the parent training schools for officers and non-commissioned officers.

170. Since 2000, the Chilean army has gradually improved its teaching programme in law, based on the overall concept of military law. In 2003, a legal education programme was adopted, with two aims: (i) to centralize and standardize legal knowledge of international human rights law and international humanitarian law in order to update teaching content in the light of the international obligations assumed by Chile; and (ii) to establish an in-service training programme. This programme was designed for use in training not only officers but also permanent military staff. Courses for officers include 20 hours of teaching on international law and general human rights theory in the second year of study at the Military Academy and three class hours in the service officers' course. Courses for permanent staff include 20 class hours on human rights and humanitarian law in the space-based communications course, as well as 10 class hours in the non-commissioned officers arms and services course for first sergeants and 20 class hours on the same subject in the combat intelligence/exploration course.

171. The air force uses human rights education modules in the basic programmes of all its parent schools, both for training officers and for providing specialized training to its permanent staff. This means that all officers and permanent staff acquire relevant knowledge of human rights and international humanitarian law.

172. The Chilean navy is currently updating human rights education for use in all its parent schools under the basic human rights education module. This module will be used from 2018 onward.[156]

[156] Currently, the Arturo Prat Naval School, the Grumetes Alejandro Navarrete Cisterna School and the Naval Polytechnic Academy include study of the Universal Declaration of Human Rights in various courses. The Naval Academy also teaches classes on the Inter-American Convention on Human Rights and the Polytechnic School has a course on international law that includes human rights topics.

Article 24
Victims' rights

173. Act No. 19.123, which is mentioned in the introduction and in the information provided in relation to article 12, adopts the broad definition of "victim" for the purposes of providing assistance and guidance on the reparation measures adopted by the State. The Human Rights Programme Unit was established on the basis of the Act to continue the tasks and actions involved in determining the location and circumstances of the disappearance or death of disappeared prisoners and of disappeared persons whose remains have not been found, even though their deaths have been legally recognized. Article 6 of the Act establishes the right to the truth as an inalienable right of victims' relatives and of society at large, and lawmakers have entrusted the Unit with ensuring the effective enjoyment of this right. With regard to measures guaranteeing the right of victims and their relatives to know the truth, reference should be made to the successive truth commissions already mentioned in the introduction and in the information provided in relation to article 3. The State has taken steps to provide all possible assistance to relatives of victims of enforced disappearance in their efforts to determine the victims' fate and whereabouts. Thus far, the search for victims of disappearance has been based on judicial proceedings.

174. The judiciary, assisted by State agencies such as the Forensic Medical Service and the Investigative Police and its Human Rights Brigade, has focused on establishing the fate and whereabouts of victims of enforced disappearances committed under the military dictatorship, as has the Human Rights Programme Unit by applying to the judiciary for investigations to be carried out and funding them from its own budget. These institutions are currently working together in the inter-institutional forum set up to assist the justice system in the search for victims of enforced disappearance under the dictatorship, the functioning of which was described in the information given in relation to article 3. Chile has thus begun to implement the recommendations made by the Working Group on Enforced or Involuntary Disappearances[157] for conducting activities according to a joint State policy, with support from the legislative, executive and judicial branches. The Office of the Under-Secretary for Human Rights also sought to establish an administrative mechanism to assist the search for victims of enforced disappearance by requesting an increase in the budget appropriation for the Human Rights Programme Unit in 2017, which was approved by the National Congress.[158] The additional funds were used to set up the search and investigation team mentioned in paragraph 50.

175. The Forensic Medical Service is directly involved in identifying victims of enforced disappearance and establishing the causes of death. In conjunction with special investigating judges, it is in charge of returning victims' remains to their relatives on its premises, assisted by the social welfare team of the Human Rights Programme Unit and the experts who helped identify the victim. While there is no statutory procedure for this, there is close coordination between social workers and the forensic team in determining where the remains are to be handed over and whether the relatives wish to be present, assisting with funeral arrangements and formally returning the remains on behalf of the State in a manner that is mindful of ethnic, religious, cultural and other considerations that make this moment an act embodying one dimension of the reparation owed by the State. With regard to the taking of ante-mortem samples from disappeared persons and their relatives for identification purposes, reference is made to the information provided in relation to article 19.

176. With regard to reparation for victims of enforced disappearance, Chile has a universal pension system established pursuant to the recommendations made by the truth commissions. Act No. 19.123 created the National Reparation and Reconciliation Board to

[157] Report of the Working Group on Enforced or Involuntary Disappearances on its 2012 mission to Chile (A/HRC/22/45/Add.1), para. 19.

[158] Act No. 20.981, budget appropriation for the Human Rights Programme Unit of the Ministry of Justice and Human Rights, notes 4 and 5, totalling 1,691,634 million pesos.

implement the reparation measures proposed by the Rettig Commission,[159] which cover such aspects as money, medical care and education.[160] The State does not have an administrative procedure whereby victims can obtain compensation, however. Relatives of victims of human rights violations must apply for compensation through the courts. Their applications have had mixed results. Initially, the Supreme Court ruled against them on the grounds that civil proceedings were time-barred under article 2332 of the Civil Code. The State Defence Council also argued against compensation on the grounds that victims had already received reparation under Act No. 19.123 and accordingly upheld exemptions from payment. As indicated in the information provided in relation to article 8, the judiciary changed the requirements and the Criminal Division of the Supreme Court ruled in favour of applications submitted by victims of enforced disappearance, execution and torture.[161]

177. Act No. 19.980, published on 9 November 2004, expanded and established benefits for relatives of victims of human rights violations and political violence. It extended education benefits by a semester for degree courses lasting less than five semesters and by two semesters for degree courses lasting five or more semesters, in case the final examination is extended by a year. The benefit is paid for 10 months per year if the recipient is studying for only one degree. The Act also grants a reparation voucher worth 10 million pesos[162] for children of recognized victims, although the amount of the reparation pension is deducted from this amount, and a reparation voucher for children of victims who are not receiving the monthly reparation pension. Article 6 of the Act empowers the President of the Republic to award 200 charity pensions equivalent to 40 per cent of the amount of reparation. Persons to whom a charity pension may be awarded include partners who, while they did not have children with the victim, lived with the victim for a long time and were financially dependent on him or her, and siblings and other relatives up to the third degree of consanguinity (such as great-grandchildren, cousins, and aunts and uncles).

178. Psychosocial care as a rehabilitation measure for indirect victims of enforced disappearance is provided through PRAIS.[163] The beneficiaries indicated above are entitled to receive free of charge the medical services listed in Act No. 18.469, namely, preventive medicine, medical treatment, dental care and pregnancy care. This type of reparation weighs the individual needs of each person. With regard to the Working Group's recommendations concerning possible problems in receiving care under PRAIS, it should be mentioned that the Programme's budget appropriation was increased by 25.86 per cent in 2016 in order to comply with the laws in force[164] and enable it to prioritize the technical aids referred to in article 10 of Act No. 19.992,[165] reduce waiting times, guarantee access to medicines not available in regional networks, recruit more specialized staff and be equipped to manage all aspects of reparation.

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[159] The Board has implemented measures such as the award of a monthly pension to the victim's spouse, the victim's mother or the victim's father if the mother forgoes it or has died, the mother or father of the victim's children born out of wedlock and the victim's children aged under 25 or children of any age who have a 50-per-cent physical or mental disability. Free medical services as established in articles 8 and 9 of Act No. 18.469 have also been granted to such persons, as well as to the victim's siblings.

[160] Act No. 20.405 established exemption from compulsory military service for victims' children, grandchildren and relatives up to the fourth degree of the collateral line.

[161] The judiciary reports that up to 2016, the Supreme Court issued a total of 144 judgments granting compensation for moral injury to relatives of victims of human rights violations, according to statistics provided by the office of the national coordinator for cases of human rights violations.

[162] Equivalent to US$ 15,394.25.

[163] In February 2015, the Office of the Under-Secretary for Welfare Networks in the Ministry of Health issued new programme guidelines for PRAIS to all health service directors. These guidelines gave instructions for the proper management of resources to ensure the availability and accessibility of services and included quality and user satisfaction criteria for rehabilitation services that mainstream the gender perspective and cultural relevance.

[164] Ordinary resolution No. 2811 of 15 September 2016 of the Office of the Under-Secretary for Welfare Networks concerning PRAIS.

[165] Article 10. The persons indicated in articles 1 and 5 of this Act shall be entitled to receive from the State the technical aids and physical rehabilitation needed to overcome physical injuries resulting from political imprisonment or torture, where such injuries are permanent and limit the recipient's capacity for education, work or social integration.

179. Chile has taken steps to recognize the legal situation of disappeared persons. Act No. 20.377 on the declaration of absence by reason of enforced disappearance was adopted in response to the needs of relatives of victims of enforced disappearance[166] (annex XII). The spouse or children of the disappeared person or, in their absence, their descendants may request this declaration. If there are no descendants, ascendants may request it. If there are no ascendants or descendants, collateral relatives may do so. Under article 11 of the Act, the judge must formally notify the Civil Registry and Identity Service, which takes the corresponding steps to register the dissolution of the marriage and the transfer of all the disappeared person's property. To date, 68 exempt resolutions have been issued on transfers of property by reason of enforced disappearance and three marriages have been dissolved at the request of the spouse of a victim of enforced disappearance.

180. While the functions of the Civil Registry and Identity Service do not include keeping an official record of declarations of absence of persons who were victims of enforced disappearance, there is a bill amending Act No. 20.377 that would require State organs to identify individually as victims of enforced disappearance the disappeared prisoners listed in the truth commissions' reports and that would create a public register for this purpose (BOL No. 9593-17, annex XIII).

181. To guarantee victims' right to form associations concerned with enforced disappearances and human rights groups in general, article 1 (3) of the Constitution recognizes and protects the intermediary groups through which society is organized and structured and guarantees them the necessary autonomy to achieve their own specific ends. Act No. 20.500[167] established a general framework for associations and, among other innovations, created public interest associations, which must be entered in a register of public interest organizations in order to obtain funding from the Fund for Strengthening Public Interest Organizations.

Article 25
Children in cases of enforced disappearance

182. The National Service for Minors (SENAME) in the Ministry of Justice is the public institution responsible for adopting and/or complying with all legal and/or administrative and technical measures to ensure the protection and safety of children whose rights have been violated. Its legal mandate and structure were established by Decree-Law No. 2465 of 1979, Act No. 20.032 establishing a child and adolescent care system through a network of SENAME partners and Act. No. 19.968 creating the family courts. Its functions include regulating and monitoring adoption in Chile and carrying out the instructions on relevant matters issued by the various courts distributed throughout the country.

183. With regard to the procedures[168] for guaranteeing the right of disappeared children to recover their true identity, SENAME has jurisdiction over children whose rights have been violated and children who may have lost their identity as a result of offences such as abandonment, trafficking or kidnapping. In these situations, it must comply, either through its own centres or through partner agencies, with orders of protection issued by family

[166] For these purposes, enforced disappearance is considered to be the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by a group of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which occurred under the dictatorship.

[167] Act No. 20.500 of 2011 on associations and citizen participation in the management of public affairs. The Act put an end to the granting of legal personality by administrative decision, establishing a new mechanism whereby legal personality is acquired simply by depositing the statutes as required by law. This simplified the procedures for setting up and obtaining legal personality for social organizations. Furthermore, by exempt resolution No. 215, the National Human Rights Institute adopted the amended text of the operating rules of the registry of institutions for the protection and promotion of human rights, which establish the procedure for registering human rights entities wishing to take part in the election of four of the Institute's board members.

[168] SENAME has developed a number of protocols and technical guidelines for preventing and rectifying situations in which children's rights are violated.

courts. In particular, it must draw up individual and family intervention plans aimed at restoring children's rights, which must include the right to an identity.

184. For adults who believe that they may be the children of disappeared parents, SENAME has a "search for origins" subprogramme that is available to adults who have information showing that they were adopted. The subprogramme provides technical assistance to people wishing to locate their biological family in accordance with article 27 of Act No. 19.620. It should be mentioned that the fundamental principle of the Adoption Act is the best interests of the child. The child's family is involved in all the principal stages of the procedure for declaring that a child may be put up for adoption. For instance, once the procedure has begun, the family court must summon the child's ascendants and other blood relatives to the preliminary hearing, where they can oppose the application to adopt. If they do oppose it, the proceeding becomes a judicial proceeding. Article 30 of Act No. 19.620 also stipulates that intercountry adoption is permissible only if there are no Chilean couples or foreign couples permanently resident in Chile who are interested in adopting the child and fulfil the legal requirements. This stipulation is designed to prevent child trafficking among different countries.